

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.
DEC 27 2005
ENTERED DIRECTOR'S JOURNAL

In the Matter of:

The Cincinnati Gas & Electric Company
139 East Fourth Street
Cincinnati, Ohio 45202

Director's Final Findings
and Orders

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to The Cincinnati Gas & Electric Company ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 3704.03 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law. No change in ownership of the Respondent or of the facility as identified in Finding 1 shall in any way alter Respondent's obligations under these Orders.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 3704 and the rules promulgated thereunder.

IV. FINDINGS

By entering into these Orders, Respondent does not admit to any matter of law or fact herein. The Director of Ohio EPA has determined the following findings:

1. Respondent owns and operates the Walter C. Beckjord Generating Station located at 757 U.S. Route 52, New Richmond, Clermont County, Ohio ("Beckjord facility"). At the Beckjord facility, Respondent generates electricity through the use of a pulverized coal-fired boiler. The boiler has a maximum heat input capacity of 971 MMBtu/hr (100 MW) and is controlled by an electrostatic precipitator ("ESP").

2. The coal-fired boiler generates, in part, particulate emissions, as defined in OAC Rule 3745-17-01(B)(11) and is an "air contaminant source" as defined in OAC Rule 3745-15-01(C) and (W). The coal-fired boiler is identified by Ohio EPA as emissions unit ("EU") B001.

I certify this to be a true and accurate copy of the
official document as filed in the records of the Ohio
Environmental Protection Agency.

[Signature]
Date 12-27-05

3. OAC Rule 3745-17-10 establishes specific particulate emission limitations for fuel burning equipment. Specifically, OAC Rule 3745-17-10 establishes an allowable particulate emission limit for EU B001 of 0.10 pound of particulate emissions per million Btu of actual heat input ("lb/MMBtu").

4. In February 1998, Respondent and the U.S. Environmental Protection Agency ("USEPA") entered into a Consent Order requiring Respondent to maintain compliance with OAC Rules 3745-17-07 and 3745-17-10 as the rules relate to Respondent's Beckjord facility. Furthermore, the Consent Order required Respondent to perform semi-annual stack testing for EU B001 during the years 1998 through 2000. In the event that stack testing indicated that Respondent had exceeded the 0.10 lb/MMBtu limit, Respondent was required to shut down the EU and could only restart when:

- Respondent engaged the services of a professional engineer to perform a comprehensive inspection of the boiler and control equipment and to make recommendations regarding necessary corrective measures.
- Respondent completed the recommended corrective measures it deemed necessary to bring the EU back into compliance. A report detailing the completion of the corrective measures was to be submitted to USEPA or Ohio EPA within 15 days of completing the corrective measures.
- Thereafter, Respondent was required to retest the EU within 45 days following restart to demonstrate compliance.

The Consent Order also required Respondent to submit quarterly continuous opacity monitoring excess emission reports to the Hamilton County Department of Environmental Services ("HCDOES") and USEPA.

5. On 10/12/99, Respondent performed a particulate emission test for EU B001. On 10/29/99, Respondent submitted the results of the test to HCDOES. The report indicated that EU B001 had an emission level of 0.494 lb/MMBtu, exceeding the established emission limitation of 0.10 lb/MMBtu.

6. On 11/5/99, Respondent performed a follow-up emission test. On 11/29/99, Respondent submitted the results of the test to HCDOES. The report indicated that EU B001 had an emission level of 0.034 lb/MMBtu. The test results indicated that EU B001 had an emission level below the established 0.10 lb/MMBtu emission limitation.

7. On 5/4/00 and 5/26/00, Respondent performed particulate emission tests on EU B001. On 6/1/00, Respondent submitted the results of the test performed on 5/4/00 to HCDOES. The results indicated that EU B001 had an emission level of 0.135 lb/MMBtu, exceeding the established emission limitation of 0.10 lb/MMBtu. On 6/26/00, Respondent submitted the results of the test performed on 5/26/00 to HCDOES. The report indicated that EU B001 had an emission level of 0.16 lb/MMBtu, exceeding the established emission limitation of 0.10 lb/MMBtu.

8. On 5/26/00, Respondent sent a letter to USEPA detailing the corrective measures Respondent proposed to address the failed particulate emission test performed on 5/4/00. HCDOES received a copy of the letter on 5/30/00.

9. On 7/5/00, HCDOES issued a Notice of Violation ("NOV") to Respondent for exceeding the particulate emission limit of 0.10 lb/MMBtu on 5/4/00. Specifically, EU B001 had an emission level of 0.135 lb/MMBtu, resulting in a violation of OAC Rule 3745-17-10 and ORC § 3704.05(G). The NOV concluded by directing Respondent to submit a compliance plan to HCDOES that outlined what steps would be taken to bring EU B001 into compliance.

10. On 7/24/00, in response to the NOV issued on 7/05/00, Respondent submitted a compliance plan and a letter of explanation regarding the violations associated with EU B001.

11. On 12/6/00, Respondent performed a particulate emission test for EU B001. On 1/19/01, Respondent submitted the results of the test performed on 12/6/00 to HCDOES. The report indicated that EU B001 had an emission level of 0.04 lb/MMBtu and was, therefore, in compliance with OAC Rule 3745-17-10.

12. On 11/5/02, Respondent performed a particulate emission test for EU B001. On 12/5/02, Respondent submitted the results of the test performed on 11/5/02 to HCDOES. The report indicated that EU B001 had an emission level of 0.095 lb/MMBtu and was, therefore, in compliance with OAC Rule 3745-17-10.

13. On 10/28/03, Respondent performed a particulate emission test for EU B001. The initial test results were received on 11/3/03, and indicated that EU B001 had an emission level of 0.139 lb/MMBtu, exceeding the established emission limitation of 0.10 lb/MMBtu. Respondent verbally reported the test results to HCDOES on 11/3/03 and to Ohio EPA on 11/4/03. On 11/18/03, Respondent provided the written results of the test performed on 10/28/03 to HCDOES at a meeting it had requested with representatives of HCDOES.

14. Respondent indicated that, upon receipt of the initial test results on 11/3/03, EU B001 was taken off-line until 11/16/03. Respondent further stated that during this time repairs and inspections were made to EU B001 as outlined in past

protocol of failed tests. Respondent indicated that, in order to assure operational compliance with the applicable standards, EU B001 underwent a series of compliance tests. On 11/16/03, EU B001 was brought back on line, but derated to 80 percent of capacity. On 11/20/03, a particulate test was performed on EU B001 in the morning while the unit was operated at 80 percent of capacity. Respondent indicated that the results were determined on-site and demonstrated that the unit was in compliance. Another particulate test was performed in the afternoon while the unit was operated at 90 percent of capacity. Respondent indicated that the results were again determined on-site and demonstrated that the unit was in compliance. The following day the unit was tested at 95 percent of capacity and at 100 percent of capacity, with results demonstrating compliance with the particulate emission limit. Nevertheless, Respondent indicated operation of EU B001 continued at 90 percent of capacity to assure compliance with the particulate emission limit.

15. On 12/09/03, HCDOES issued a Notice of Violation ("NOV") to Respondent for exceeding the particulate emission limit of 0.10 lb/MMBtu. Specifically, testing performed on 10/28/03 revealed EU B001 had an emission level of 0.139 lb/MMBtu, resulting in a violation of OAC Rule 3745-17-10 and ORC § 3704.05(G). The NOV concluded by directing Respondent to submit a compliance plan to HCDOES that outlined what steps would be taken to bring EU B001 into compliance.

16. On 12/22/03, Respondent submitted a compliance plan and a letter of explanation regarding the violations associated with EU B001 that were detailed in the NOV sent on 12/9/03, along with the measures that had been taken as described in Finding 14, above.

17. On 1/23/04, Respondent performed a particulate emission test for EU B001. On 2/23/04, Respondent submitted the results of the test performed on 1/23/04 to HCDOES. The report indicated that EU B001 had a particulate emission level of 0.07 lb/MMBtu and was, therefore, in compliance with OAC Rule 3745-17-10.

18. On 4/29/04, Respondent performed a particulate emission test for EU B001. On 6/17/04, Respondent submitted the results of the test performed on 4/29/04 to HCDOES. The report indicated that EU B001 had an emission level of 0.074 lb/MMBtu and was, therefore, in compliance with OAC Rule 3745-17-10.

19. During an outage in late May 2004, Respondent indicates the station installed baffles in certain areas of the precipitator to improve the flue gas distribution and minimize fly ash re-entrainment from the precipitator hoppers.

20. On 6/3/04, Respondent performed a particulate emission test for EU B001 while the unit was operated at 90 percent of capacity. Respondent indicated the purpose of this test was to evaluate the effect of the baffle addition on unit operation. On 7/29/04, Respondent submitted the results of the test performed on 6/3/04 to

HCDOES. The results indicated that EU B001 had a particulate emission level of 0.057 lb/MMBtu and was, therefore, in compliance with OAC Rule 3745-17-10.

21. On 6/4/04, Respondent performed a particulate emission test for EU B001 while the unit was operated at 100 percent of capacity. On 7/29/04, Respondent submitted the results of the test performed on 6/4/04 to HCDOES. The results indicated that EU B001 had a particulate emission level of 0.081 lb/MMBtu and was, therefore, in compliance with OAC Rule 3745-17-10.

22. On 6/28/04, Respondent performed a particulate emission test on EU B001. On 7/26/04, Respondent submitted the results of the test performed on 6/28/04 to HCDOES. The results indicated that EU B001 had a particulate emission level of 0.079 lb/MMBtu and was, therefore, in compliance with OAC Rule 3745-17-10.

23. On 11/2/04, Respondent performed a particulate emission test for EU B001. On 12/2/04, Respondent submitted the results of the test performed on 11/2/04 to HCDOES. The results indicated that EU B001 had a particulate emission level of 0.062 lb/MMBtu and was, therefore, in compliance with Rule OAC 3745-17-10.

V. ORDERS

The Director hereby issues the following Orders:

1. Respondent shall pay the amount of twenty-eight thousand (\$28,000) in settlement of Ohio EPA's claims for civil penalties for the findings and violations asserted herein, which may be assessed pursuant to ORC Chapter 3704. Within fourteen (14) days after the effective date of these Orders, payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for twenty-two thousand four hundred dollars (\$22,400) of the total amount. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

2. In lieu of paying the remaining five thousand six hundred dollars (\$5,600) of the civil penalty, Respondent shall fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of \$5,600 to the Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD). Respondent shall make payment on or within thirty (30) days after the effective date of these Orders by tendering an official check made payable to "Treasurer, State of Ohio" for \$5,600. The official check shall

be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to the above-stated address.

3. A copy of each of the above checks shall be sent to James A. Orlemann, Assistant Chief, SIP Development and Enforcement, or his successor, at the following address:

Ohio EPA
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049

4. Should Respondent fail to fund the SEP within the required timeframe set forth in Order 2, Respondent shall immediately pay to Ohio EPA \$5,600 of the civil penalty in accordance with the procedures in Order 1.

TERMINATION

Respondent's obligations under these Orders shall terminate upon Ohio EPA's receipt of the official checks required by Section V of these Orders.

OTHER CLAIMS

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation, not a party to these Orders, for any liability arising from, or related to, the Respondent's activities at the facility.

VIII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondent.

IX. MODIFICATIONS

These Orders may be modified by agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

X. NOTICE

All documents required to be submitted by Respondent pursuant to these Orders

shall be addressed to:

Hamilton County Department of Environmental Services
Division of Air Quality
250 William Taft Road
Cincinnati, Ohio 45219
Attn: Kerri Castlen

and to:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: Tom Kalman

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

XI. RESERVATION OF RIGHTS

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Section XII of these Orders.

XII. WAIVER

In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of further enforcement action by Ohio EPA for only the findings and violations specifically cited in these Orders, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondent's liability for the findings and violations specifically cited herein.

Respondent hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondent hereby waives any and all rights Respondent may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such an event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated

or modified.

XIII. EFFECTIVE DATE

The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

XIV. SIGNATORY AUTHORITY

Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency



Joseph P. Koncelik, Director

12/20/05
Date

IT IS SO AGREED:

The Cincinnati Gas & Electric Company



Signature

12-14-05
Date

Harold James Klosterman III

Station Manager