

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A

DEC 27 2005

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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 William H. Zimmer Generating Station located at 1781 U.S. Route 52, Moscow, Clermont County, Ohio ("Zimmer facility"). At the Zimmer facility, Respondent generates electricity through the use of a pulverized coal-fired, dry bottomed boiler, which is identified by Ohio EPA as emissions unit ("EU") B006. The boiler has a maximum heat input capacity of 11,968 MMBtu/hr (1300 MW) and is controlled by an electrostatic precipitator ("ESP"), low NOx burners, a flue gas desulfurization system ("FGD") and a selective catalytic reduction ("SCR") system.

2. Under the New Source Performance Standards ("NSPS") in 40 CFR, Part 60, Subpart Da, the NOx emissions from EU B006 are limited to 0.60 lb/MMBtu, as a thirty (30) day rolling average.

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.

*Dir. Jackson* Date *12-27-05*

3. The Title V permit for Respondent's Zimmer facility (Facility ID: 14-13-09-0154) became effective on 1/3/05 and requires that the NOx emissions from EU B006 not exceed the limitation of 0.60 lb/MMBtu as a 30-day rolling average.

4. On 4/27/05, Respondent submitted an excess emissions report ("EER") that indicated that for 74 days during the first quarter of 2005 emissions from EU B006 exceeded the 30-day rolling average limitation of 0.60 lb/MMBtu for NOx.

5. Respondent's failure to meet the 30-day rolling average limitation for NOx emissions as required in Respondent's Title V permit were violations of ORC §§ 3704.05(C) and (J)(2), the terms and conditions of PTI 14-1036, the Title V permit, and the NSPS.

6. On 5/10/05, HCDOES issued an NOV to Respondent detailing Respondent's failure to comply with the terms and conditions contained in Respondent's Title V permit relating to NOx emissions. HCDOES required Respondent to submit a compliance plan by 5/25/05 that identified the corrective actions Respondent would undertake to ensure that the violations set out in the 5/10/05 NOV would not occur in the future.

7. On 5/23/05, Respondent submitted a letter to HCDOES responding to the NOV and providing a compliance plan to address the violations set out in the 5/10/05 NOV. As explained in Respondent's 5/23/05 letter and compliance plan, during the fourth quarter of 2004, EU B006 began experiencing higher trending NOx values. Respondent indicated that the station began an immediate investigation, forming a task force that included manufacturer's representatives, to locate the root cause of the trend. Respondent reported that testing was hampered when the coal normally used in EU B006 became unavailable as a result of flooding and problems with the Ohio River Belville Dam Lock in early 2005. During an outage from 3/10/05 through 3/20/05, an internal inspection of the steam generator revealed that two air dampers and a number of burner registers were frozen open, providing less than optimum combustion control. Repairs to the machinery were instituted, and EU B006 was returned to service on 3/21/05, at which time Respondent states that NOx values returned to historically compliant normal levels. Respondent indicated that it did not become aware of the 30-day rolling average exceedances until 3/23/05. Respondent reported that the station undertook additional steps, including placing its SCR equipment into service early, to reduce NOx levels and expedite a return to compliance. Respondent reported that, as a result, EU B006 was in compliance with the 30-day rolling average by 4/1/05, and the unit has been in compliance since that time. Finally, Respondent indicated that it had implemented additional steps to ensure compliance with the 30-day rolling average limitation for NOx, as outlined in the 5/23/05 letter and compliance plan.

8. The Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying

with the following Orders and their benefits to the people of the State to be derived from such compliance.

## **V. ORDERS**

The Director hereby issues the following Orders:

1. Respondent shall pay the amount of twenty-five thousand two hundred dollars (\$25,200) 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 thousand one hundred and sixty dollars (\$20,160) 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 and forty dollars (\$5,040) of the civil penalty, Respondent shall fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of \$5,040 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 \$5,040. 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 \$5,040 of the civil penalty in accordance with the procedures in Order 1.

## **VI. 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.

#### **VII. 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

12/15/05

Date

BARRY E. PULSKAMP

Barry E. Pulskamp

Vice President, Power Operations