

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

City of Painesville	:	<u>Director's Final Findings</u>
Painesville Municipal Electric Plant	:	<u>and Orders</u>
7 Richmond Street	:	
Painesville, Ohio 44077	:	
	:	
	:	
RESPONDENT	:	

PREAMBLE

It is agreed by parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to City of Painesville, Painesville Municipal Electric Plant ("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 hereinafter defined) 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 OAC Chapter 3704 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent is a municipal corporation in the State of Ohio. Respondent owns and operates an electric generating plant ("facility") known as Painesville Municipal Electric Plant. The facility is located at 325 Richmond Street, Painesville (Lake County), Ohio, and is identified by Ohio EPA as facility identification number 0243110008. There are three coal-fired boilers at the facility. Boiler number three (identified by Ohio EPA as

"emissions unit B003") has a maximum design heat input capacity of 218.5 million ("MM") Btu/hour and is the subject of these Orders. The other two boilers are identified by Ohio EPA as emissions units B001 and B004. The facility is classified as a "major stationary source," as defined in OAC Rules 3745-77-01(W) and 3745-31-01(WW).

2. Emissions unit B003 emits, in part, products of combustion that include particulate emissions ("PE"), particulate matter ("PM"), and particulate matter with an aerodynamic diameter of 10 microns or less ("PM₁₀"), which are defined as "air pollutants" or "air contaminants" in Ohio Administrative Code ("OAC") Rule 3745-15-01(C). Additionally, emissions unit B003 is an "air contaminant source" as defined in OAC Rules 3745-31-01(I) and 3745-15-01(C) and (W).

3. OAC Rule 3745-77-02(B) states, in part, that major sources are subject to the permitting requirements of OAC Chapter 3745-77 (i.e., Title V).

4. OAC Rule 3745-77-07(A)(1) requires, in part, that a Title V permit include emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of issuance. OAC Rule 3745-77-07(A)(3) requires, in part, that a Title V permit contain emission monitoring and analysis procedures or test methods sufficient to yield reliable representative data to determine the source's compliance with the permit and applicable emission limitations.

5. OAC Rule 3745-77-01(H) defines, in part, an applicable requirement as any standard or other requirement in the approved State Implementation Plan ("SIP").

6. OAC Rule 3745-17-10(C)(1) is part of Ohio's approved SIP and establishes, in part, PE limitations for fuel burning equipment located in Lake County that produce heat or power by indirect heat transfer. The PE limitation is based on the sum of the equipment manufacturer's or designer's guaranteed maximum (i.e., actual) heat input for each boiler that is physically and operational united with one another. For emissions unit B003, this rule specifies a limitation of 0.10 pound per MM Btu ("lb/MM Btu") of actual heat input.

7. ORC § 3704.05(A) prohibits, in part, any person from violating an allowable emission limitation adopted by the Director of Ohio EPA.

8. ORC § 3704.05(C) prohibits any person from violating any terms or conditions of any permit issued by the Director of Ohio EPA.

9. ORC § 3704.05(G) prohibits, in part, any person from violating any rule

adopted by the Director of Ohio EPA.

10. ORC § 3704.05(J)(2) prohibits, in part, any person from violating any applicable requirement of a Title V permit or any permit condition, except for an emergency as defined in 40 CFR 70.6(g).

11. On May 17, 1985, Ohio EPA issued PTI # 02-1816 to Respondent for the resumption of operations of emissions units B003 and B004 after they were shut down in 1979 or 1980. The PTI specified a PE limitation of 0.10 lb/MM Btu of actual heat input for emissions unit B003.

12. Pursuant to OAC Rule 3745-77-07(A)(1) and (A)(3), Ohio EPA issued a Title V permit to Respondent on June 25, 1998, with the following special terms and conditions to assure emissions unit B003 complied with applicable rules and laws:

- a requirement to comply with a PE emission limitation of 0.10 lb/MM Btu of heat input, as specified in PTI # 02-1816 and OAC Rule 3745-17-10(C)(1); and
- a requirement to conduct compliance tests to demonstrate compliance with the PE limitation.

13. On May 28, 2003, Respondent conducted the compliance tests for emissions unit B003 that were required by the Title V permit. The compliance test measured the average PE at 0.216 lb/MMBtu of actual heat input. This measurement revealed an exceedance of the 0.10 lb/MM Btu PE limitation specified in Respondent's Title V permit and PTI and in OAC Rule 3745-17-10(C)(1). The exceedance constituted a violation of OAC § 3704.05(A), (C), (G) and (J)(2).

14. On July 1, 2003, Ohio EPA, Northeast District Office ("NEDO") sent Respondent a notice of violation ("NOV") for the failure to comply with the terms and conditions of Respondent's Title V permit and OAC Rule 3745-17-10(C)(1). Additionally, the NOV requested Respondent to submit a plan to bring emissions unit B003 into compliance ("compliance plan") and to retest the unit to demonstrate compliance after the compliance plan was implemented.

15. On July 15, 2003, Respondent replied to the July 1, 2003, NOV. Respondent requested permission to do the following actions to bring the emissions unit B003 into compliance:

- hire three separate consulting firms to review the stack test data,

inspect the boiler and electrostatic precipitator, and make any necessary repairs that might be identified;

- review coal quality test results with the coal supplier; and
- run the boiler only during an emergency situation until the next stack test.

16. On October 6, 2003, Respondent retested the PE from emissions unit B003. The average PE were measured at 0.136 lb/MM Btu of actual heat input. The retest confirmed that the boiler was out of compliance with the emission limitation in OAC Rule 3745-17-10(C)(1) and specified in Respondent's Title V permit and PTI, in violation of OAC § 3704.05(A), (C), (G) and (J)(2).

17. On November 18, 2003, NEDO sent Respondent a second NOV for the failure to comply with the terms and conditions of Respondent's Title V permit and OAC Rule 3745-17-10(C)(1). The NOV requested Respondent to submit a new compliance plan to bring emissions unit B003 into compliance or to submit a date that the boiler would be shut down.

18. On November 26, 2003, Respondent replied to the November 18, 2003, NOV. The response proposed the following actions to bring emissions unit B003 into compliance:

- hire two consulting firms to review the stack test data, inspect the boiler, make recommendations to correct any problems, and to make any necessary repairs that might be identified;
- review changes made to the City of Orrville's boiler;
- determine if the stack tests were being conducted at the proper location;
- only run boiler number 3 during emergency situations until the next stack test and inform Ohio EPA of any emergency situation as soon as possible ; and
- reschedule the next stack test for the first quarter of 2004 after all repair work was completed.

19. On February 25, 2004, Respondent informed NEDO, via a memorandum, of the results of the boiler inspections and repairs. As part of the repair work, Respondent

identified and repaired several air heater leaks, identified and repaired significant leaks in the boiler casing, and cleaned several components of the boiler. The memorandum also requested permission to start-up emissions unit B003 to prepare for an April 5, 2004, PE compliance test (i.e., stack test).

20. On March 1, 2004, NEDO sent Respondent a letter acknowledging receipt of the February 25, 2004, memorandum and granting approval to start-up emissions unit B003 to conduct preliminary PE stack testing.

21. On May 26, 2004, Respondent retested the PE from emissions unit B003. The average PE were measured at 0.157 lb/MM Btu of actual heat input. This measurement indicated that the boiler's PE continued to be out of compliance with the emission limitation in OAC Rule 3745-17-10(C)(1) and specified in Respondent's Title V permit and PTI, in violation of ORC § 3704.05(A), (C) and (J)(2).

22. On June 25, 2004, Respondent sent a memorandum to NEDO informing it of the results of the May 26, 2004 failed stack test and stating that an engineering firm had been retained to determine why the boiler had failed the test.

23. On April 20, 2005, Respondent conducted another compliance test on emissions unit B003. The compliance test measured PE of 0.087 lb/MM Btu of actual heat input, which is in compliance with the terms and conditions of Respondent's Title V permit and PTI, and the PE limitation in OAC Rule 3745-17-10(C)(1).

24. Respondent violated ORC § 3704.05(A), (C), (G) and (J)(2) by allowing the boiler's PE to exceed the 0.10 lb/ MM Btu emission limitation specified in Respondent's Title V permit and PTI, and in OAC Rule 3745-17-10(C)(1). The violation occurred from the day of the first compliance test on May 28, 2003, and continued until compliance was demonstrated on April 20, 2005, excluding the months the emissions unit did not operate.

25. 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 the 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 fourteen thousand dollars (\$14,000) in the settlement of Ohio EPA's claims for civil penalties, which may assessed pursuant to ORC Chapter 3704. Within thirty (30) 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 eleven thousand two hundred dollars (\$11,200) 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 two thousand eight hundred dollars (\$2,800) of the civil penalty, Respondent shall, within thirty (30) days of the effective date of these Orders, fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of \$2,800 to Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for \$2,800. The official check shall specify that such monies are to be deposited into Fund 5CD established by Ohio EPA for the Clean Diesel School Bus Program. 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 submitted 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 \$2,800 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 operation of Respondent's 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

Except as otherwise provided in these Orders, all documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Northeast District Office
2110 East Aurora Road
Twinsburg, Ohio 44087
Attention: Ken Djukic

and to:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Air Pollution Control
122 South Front Street, P.O. Box 1049
Columbus, Ohio 43216-1049
Attention: Thomas 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 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 the Respondent's liability for the 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

Date

IT IS SO AGREED:

City of Painesville
Painesville Municipal Electric Plant

Signature

Date

Printed or Typed Name

Title