

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CAA-05-2023-0001
)	
City Water, Light and Power)	Proceeding to Assess a Civil Penalty
Springfield, Illinois,)	Under Section 113(d) of the Clean Air Act,
)	42 U.S.C. § 7413(d)
Respondent.)	
<hr style="border: 0.5px solid black;"/>)	

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. Complainant is the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is City Water, Light and Power, a municipal utility doing business in Illinois.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Under Section 112 of the CAA, EPA promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Coal- and Oil-Fired Electric Utility Steam Generating Units (NESHAP Subpart UUUUU) at 40 C.F.R. §§ 63.9980 through 63.10042.

10. The owner or operator of an existing affected facility was required to comply with the requirements of 40 C.F.R. §§ 63.9980 through 63.10042 by April 16, 2015.

11. The NESHAP for Coal- and Oil-Fired Electric Utility Steam Generating Units applies to coal-fired electric utility steam generating units.

12. The NESHAP, at 40 C.F.R. § 63.10000(b), provides that at all times, owners and operators of affected equipment must operate and maintain any affected source, including air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions.

13. 40 C.F.R. § 63.10010(g) states that if a mercury sorbent trap monitoring system is used, it must be installed, certified, operated, maintained and the data must be quality-assured in accordance with the NESHAP Subpart UUUUU Appendix A Hg Monitoring Provisions (Hg Monitoring Provisions).

14. 40 C.F.R. § 63.10021(b) provides that continuous compliance must be demonstrated using all quality-assured hourly data recorded by a sorbent trap monitoring system and other required monitoring systems (e.g., flow rate, CO₂, O₂, or moisture systems) to calculate a 30-boiler operating day rolling arithmetic average mercury emission rate that is updated at the end of each new boiler operating day.

15. 40 C.F.R. § 63.10020(b) provides that the owner and operator must operate the monitoring system and collect data at all required intervals at all times that the affected EGU is operating, except for periods of monitoring system malfunctions or out-of-control periods, pursuant to 40 C.F.R. § 63.8(c)(7), and required monitoring system quality assurance or quality control activities. The owner or operator is required to affect monitoring system repairs in response to monitoring system malfunction and to return the monitoring system to operation as expeditiously as practicable.

16. 40 C.F.R. § 63.10020(d) provides that except for periods of monitoring system malfunctions or monitoring system out-of-control periods, repairs associated with monitoring system malfunctions or monitoring system out-of-control periods and required monitoring system quality assurance or quality control activities including, as applicable, calibration checks and required zero and span adjustments, failure to collect required data is a deviation from the monitoring requirements.

17. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$51,796 per day of violation up to a total of \$414,364 for violations that occurred after November 2, 2015 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

18. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

19. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

20. Respondent is a "person," as that term is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

21. Respondent owned and operated four coal-fired electric utility steam generating units identified as Boilers 31, 32, 33 and 4, located at 3100 Stevenson Drive, Springfield, Illinois. The boilers ranged in size from 75 MW to 230 MW. Emissions from Boilers 31 and 32 (at a common stack), Boiler 33, and Boiler 4 were continuously monitored for mercury emissions with sorbent trap monitoring systems.

22. In Semi-Annual Compliance Reports required by NESHAP Subpart UUUUU, Respondent reported downtime of the continuous mercury monitoring systems for each boiler as a percent of total operating time for a semi-annual reporting period. The percent downtime given in each report can be found in Table 1, below:

Table 1: Reported Sorbent Trap Monitoring System Downtime

Semi-annual Reporting Period	Boilers 31 and 32 (Common Stack)	Boiler 33	Boiler 4
January 2016-June 2016	3.6%	9.7%	9.2%
July 2016-December 2016	1.9%	3.7%	25.0%
January 2017-June 2017	1.9%	8.0%	5.7%
July 2017-December 2017	4.6%	20.7%	4.5%
January 2018-June 2018	2.6%	15.5%	6.3%
July 2018-December 2018	11.5%	7.8%	4.8%

23. By failing to operate the monitoring system and collect data at all required intervals at all times that Boilers 31, 32, 33 and 4 were operating over the January 1, 2016, to December 31, 2018, reporting periods, Respondent violated 40 C.F.R. § 63.10020(b) and Section 112(i)(3) of the CAA, 42 U.S.C. § 7412(i)(3).

24. By failing to operate and maintain the continuous monitoring systems associated with mercury emissions at Boilers 31, 32, 33 and 4 with good air pollution control practices over the January 1, 2016, to December 31, 2018, reporting periods, Respondent has violated 40 C.F.R. §§ 63.8(c) and 63.10000(b) and Section 112(i)(3) of the CAA, 42 U.S.C. § 7412(i)(3).

25. On July 31, 2019, EPA issued to Respondent a Finding of Violation alleging that it violated NESHAP Subpart UUUUU by failing to operate the monitoring system and collect data as required at each boiler.

26. On September 18, 2019, representatives of the Respondent and EPA discussed the July 31, 2019, Finding of Violation.

Civil Penalty

27. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case and Respondent's cooperation, Complainant has determined that an appropriate civil penalty to settle this action is \$14,600.

28. Within 30 days after the effective date of this CAFO, Respondent must pay a \$14,600 civil penalty by ACH electronic funds transfer, payable to “Treasurer, United States of America,” and sent to:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22-checking

In the comment area of the electronic funds transfer, state Respondent’s name and the docket number of this CAFO.

29. Respondent must send a notice of payment that states Respondent’s name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
r5airenforcement@epa.gov

Mark J. Koller
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
koller.mark@epa.gov

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
r5hearingclerk@epa.gov

30. This civil penalty is not deductible for federal tax purposes.

31. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

32. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

Environmental Mitigation

33. Respondent must complete an environmental mitigation action (mitigation action) designed to remedy, reduce, or offset alleged past environmental harm caused by the alleged non-compliance.

34. Respondent shall implement the mitigation action. Respondent shall replace no fewer than 150 175-watt mercury vapor streetlights with 55-watt light-emitting diode (LED) streetlights. The mitigation action includes replacement of the luminaire and inclusion of a photocontrol.

35. Respondent must spend at least \$45,000 on the mitigation action, not including labor, miscellaneous materials and equipment costs, overhead, or disposal costs.

36. Respondent must complete the mitigation action within one year from the date of entry of this CAFO.

37. With regard to the mitigation action, Respondent certifies the truth and accuracy of each of the following:

- a. That, as of the date of executing this CAFO, Respondent is not required to perform or develop the mitigation action by any federal, state, or local law or regulation and is not required to perform or develop the mitigation

action by agreement, grant, or as injunctive relief awarded in any other action in any forum;

- b. That the mitigation action is not a mitigation action that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this CAFO;
- c. That Respondent has not received and will not receive credit for the mitigation action in any other enforcement action; and
- d. That Respondent shall neither generate nor use any pollutant reductions from the mitigation action as netting reductions, pollutant offsets, or to apply for, obtain, trade, or sell any pollutant reduction credits.

38. EPA may conduct an inspection or correspond with the relevant staff at the implementing organization at any time to monitor Respondent's compliance with this CAFO's mitigation action requirements.

39. Respondent must maintain copies of the data for all reports submitted to EPA pursuant to this CAFO. Respondent must provide the documentation of any underlying data to EPA within seven days of EPA's request for the information.

40. Within 30 calendar days of completion of the mitigation action, Respondent must submit a mitigation action completion report to EPA. This report must contain the following information:

- a. Detailed description of the mitigation action as completed;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized cost of goods and services used to complete the mitigation action documented by copies of invoices, purchase orders or cancelled checks that specifically identify and itemize the individual cost of the goods and services;
- d. Certification that Respondent has completed the mitigation action in compliance with this CAFO; and

- e. Description of the environmental and public health benefits resulting from the mitigation action (quantify the benefits and pollution reductions, if feasible).

41. Respondent must submit all notices and reports required by this CAFO by e-mail to the Air Enforcement and Compliance Assurance Branch at the address r5airenforcement@epa.gov.

42. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

43. Following receipt of the mitigation action completion report described in paragraph 40, above, EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the mitigation action and the mitigation action report;
- b. There are deficiencies in the mitigation action as completed or in the mitigation action report and EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the mitigation action or the mitigation action report.

44. If EPA exercises option b above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirement that EPA imposes in its decision.

45. If Respondent fails to undertake or complete any of the mitigation action, the resolution of civil penalty liability in Paragraph 48 will not apply. EPA's determination of whether Respondent completed the mitigation action satisfactorily and whether Respondent made good faith and timely efforts to complete the mitigation action will bind Respondent.

46. Any public statement that Respondent makes referring to the mitigation action must include the following language: "City Water, Light and Power undertook this action under the settlement of the United States Environmental Protection Agency's enforcement action against City Water, Light and Power for alleged violations under the Clean Air Act."

General Provisions

47. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: koller.mark@epa.gov (for Complainant), and Deborah.Williams@cwlp.com (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.

48. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

49. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

50. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 48, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

51. Respondent certifies that it is complying fully with the NESHAP Subpart UUUUU.

52. This CAFO constitutes an “enforcement response” as that term is used in EPA’s Clean Air Act Stationary Civil Penalty Policy to determine Respondent’s “full compliance history” under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

53. The terms of this CAFO bind Respondent, its successors and assigns.


54. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

55. Each party agrees to bear its own costs and attorney’s fees in this action.

56. This CAFO constitutes the entire agreement between the parties.

City Water, Light and Power, Respondent

Date



James O. Langfelder, Mayor
City of Springfield, Illinois

United States Environmental Protection Agency, Complainant

MICHAEL Digitally signed by
MICHAEL HARRIS
HARRIS Date: 2022.10.26
09:15:03 -05'00'

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: City Water, Light and Power
Docket No. CAA-05-2023-0001

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Date

**ANN
COYLE**

Digitally signed by
ANN COYLE
Date: 2022.10.28
09:24:30 -05'00'

Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5