

UNITED STATES
 ENVIRONMENTAL PROTECTION AGENCY 2013 JAN 23 AM 11:13
 REGION IX
 75 HAWTHORNE STREET
 SAN FRANCISCO, CA 94105

US EPA - REGION IX
 HEARING CLERK

In the Matter of:)
) Docket No. CAA-09-2013- 0002
 Thermal Energy Development)
 Partnership, L.P.,)
)
 Respondent.) CONSENT AGREEMENT AND FINAL
) ORDER PURSUANT TO 40 C.F.R.
) §§ 22.13 and 22.18

I. CONSENT AGREEMENT

The United States Environmental Protection Agency, Region IX ("EPA") and Thermal Energy Development Partnership, L.P. ("TEDP") agree to settle this matter and consent to the entry of this Consent Agreement and Final Order ("CAFO"), which simultaneously commences and concludes this matter in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).

A. AUTHORITY AND PARTIES

1. This is a civil administrative penalty action instituted against Respondent pursuant to Section 113(d) of the Clean Air Act ("CAA" or the "Act"), 42 U.S.C. § 7413(d), for violations of Section 111 of the Act, 42 U.S.C. § 7411, Standards for Performance for New Stationary Sources ("NSPS") and its implementing federal regulations at 40 C.F.R. Part 60, Subpart Db -- "Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units ("Subpart Db") and for violations of a federally approved implementation plan under Section 110 of the CAA, 42 U.S.C. § 7410.
2. Complainant is the Director of the Air Division, EPA, Region IX, who has been duly delegated from the Administrator of EPA ("Administrator") the authority to initiate this action and to sign a consent agreement settling this action.

3. Respondent is a Delaware Limited Partnership and its principal place of business is in California. TEDP currently owns a biomass facility which contains a biomass-fired steam generator ("boiler"), constructed after June 19, 1984, located at 14800 W. Schulte Road Street, Tracy, California 95304 and is referred to as the TEDP facility ("the Facility").

B. APPLICABLE STATUTORY AND REGULATORY SECTIONS

4. Pursuant to authority under Section 111 of the Act, 42 U.S.C. § 7411, the Administrator of EPA has promulgated Subpart Db at 40 C.F.R. §§ 60.40b-60.49b.

5. Subpart Db applies to each steam generating unit for which construction, modification, or reconstruction is commenced after June 19, 1984 and that has a heat input capacity from fuels combusted in the steam generating unit of greater than 29 megawatts (MW)(100 million British thermal units per hour (MMBtu/hr). 40 C.F.R. § 60.40b(a).

6. A person's failure to comply with NSPS requirements is subject to enforcement under Section 113 of the Act. 42 U.S.C. § 7413(a)(3).

7. The definition of "Person" under Section 302(e) of the Act includes individuals, corporations, partnerships and associations. 42 U.S.C. § 7602(e).

8. "Owner or operator" means any person who owns, leases, operates, controls, or supervises an affected facility. 40 C.F.R. § 60.2.

9. "Affected facility" means, with reference to a stationary source, any apparatus to which a standard is applicable. 40 C.F.R. § 60.2.

10. "Steam generating unit" is defined at 40 C.F.R. § 60.41b.

11. No owner or operator of an affected facility that can combust wood, coal, oil or a mixture of these fuels with any other fuels shall cause to be discharged into the atmosphere any gases that exhibit greater than 20 percent opacity (6 minute average), except for one 6-minute

period per hour of not more than 27 percent opacity. See 40 C.F.R. § 60.43b(f).

12. The owner or operator of an affected facility subject to the opacity standard under §60.43b is required to install, maintain and operate a continuous opacity monitoring system (“COMS”) for measuring the opacity of emissions discharged to the atmosphere and record the output of the system. 40 C.F.R. § 60.48b(a).

13. TEDP’s permit requirements are federally enforceable through SJVAPCD Rule 2201 of the California State Implementation Plan.

C. ALLEGATIONS

GENERAL ALLEGATIONS

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

15. At all times relevant to this CAFO, TEDP owned and/or operated and/or controlled the Facility. Respondent is the “owner” or “operator” of the Facility as that term is defined at 40 C.F.R. § 60.2.

16. TEDP operates a biomass-fired steam generator (“boiler”) subject to 40 C.F.R. § 60.40b(a).

17. The boiler is an “affected facility” as defined at 40 C.F.R. § 60.2 and is subject to the requirements and prohibitions set forth at Subpart Db.

18. TEDP’s Title V permit includes boiler operating requirements contained in Authority to Construct permits N-1026-1-8 (issued October 20, 2006), N-1026-1-9 (issued October 17, 2008) and N-1026-1-10 (issued July 27, 2010) (hereafter “the Permits”). The Permits’ operating requirements, in pertinent part, required the Facility to maintain and operate a continuous

emission monitoring system ("CEMS") for sulfur dioxide ("SO₂"), nitrogen oxides ("NOx"), carbon monoxide ("CO"), oxygen ("O₂") and opacity.

19. On November 21, 2012, EPA issued a Notice of Violation, R9-12-01 (the "NOV"), which identified violations of the NSPS and the Permits. This CAFO resolves all violations alleged in the NOV, which included additional violations barred by the statute of limitations.

COUNT 1: FAILURE TO PROPERLY MAINTAIN OR OPERATE THE COMS

20. Complainant incorporates by reference the allegations contained in Paragraphs 1 through 19.

21. TEDP's continuous opacity monitoring system ("COMS") was not properly maintained or operated during the following quarters: second quarter of 2008, first quarter of 2010 and third quarter of 2010.

22. TEDP's failure to properly maintain and operate a COMS for measuring the opacity of emissions discharged to the atmosphere constitutes violations of 40 C.F.R. § 60.48b(a) of Subpart Db and the CAA for each day that such failure to properly maintain and operate the COMS occurred.

COUNT 2: FAILURE TO COMPLY WITH PERMIT CONDITIONS FOR SO₂

23. Complainant incorporates by reference the allegations contained in Paragraphs 1 through 19.

24. Pursuant to the operating requirements of the Permits, the Facility was required to properly maintain and operate a CEMS for SO₂.

25. TEDP's CEMS was not properly maintained or operated for SO₂ during the following quarters: fourth quarter of 2007, first quarter of 2008, second quarter of 2008, fourth quarter of 2009, first through fourth quarters of 2010, and first and third quarters of 2011.

26. TEDP's failure to maintain and operate a CEMS for measuring SO₂ emissions discharged to the atmosphere constitutes violations of the Permits and the CAA for each day that such failure to properly maintain and operate the CEMS occurred.

COUNT 3: FAILURE TO COMPLY WITH PERMIT CONDITIONS FOR NO_x

27. Complainant incorporates by reference the allegations contained in Paragraphs 1 through 19.

28. Pursuant to the operating requirements of the Permits, the Facility was required to properly maintain and operate a CEMS for NO_x.

29. TEDP's CEMS was not properly maintained or operated for NO_x during the following quarters: fourth quarter of 2007, first quarter of 2008, second quarter of 2008, fourth quarter of 2009, first quarter of 2010, second quarter of 2010, fourth quarter of 2010, first quarter of 2011 and third quarter of 2011.

30. TEDP's failure to properly maintain and operate a CEMS for measuring NO_x emissions discharged to the atmosphere constitutes violations of the Permits and the CAA for each day that such failure to properly maintain and operate the CEMS occurred.

COUNT 4: FAILURE TO COMPLY WITH PERMIT CONDITIONS FOR CO

31. Complainant incorporates by reference the allegations contained in Paragraphs 1 through 19.

32. Pursuant to the operating requirements of the Permits, the Facility was required to properly maintain and operate a CEMS for CO.

33. TEDP's CEMS was not properly maintained or operated for CO during the following quarters: fourth quarter of 2007, first quarter of 2008, second quarter of 2008, fourth quarter of

2009, first quarter of 2010, second quarter of 2010, fourth quarter of 2010, first quarter of 2011 and third quarter of 2011.

34. TEDP's failure to properly maintain and operate a CEMS for measuring CO emissions discharged to the atmosphere constitutes violations of the Permits and the CAA for each day that such failure to properly maintain and operate the CEMS occurred.

COUNT 5: FAILURE TO COMPLY WITH PERMIT CONDITIONS FOR OPACITY

35. Complainant incorporates by reference the allegations contained in Paragraphs 1 through 19.

36. Pursuant to the operating requirements of the Permits, the Facility was required to properly maintain and operate a CEMS for opacity.

37. TEDP's CEMS was not properly maintained or operated for opacity during the following quarters: second quarter of 2008, first quarter of 2010 and third quarter of 2010.

38. TEDP's failure to properly maintain and operate a CEMS for measuring opacity constitutes violations of the Permits and the CAA for each day that such failure to properly maintain and operate the CEMS occurred.

COUNT 6: FAILURE TO COMPLY WITH PERMIT CONDITIONS FOR O₂

39. Complainant incorporates by reference the allegations contained in Paragraphs 1 through 19.

40. Pursuant to the operating requirements of the Permits, the Facility was required to properly maintain and operate a CEMS for O₂.

41. TEDP's CEMS was not properly maintained or operated for O₂ during the following quarters: fourth quarter of 2007, fourth quarter of 2009, first quarter of 2010, second quarter of 2010, fourth quarter of 2010, first quarter of 2011 and third quarter of 2011.

42. TEDP's failure to properly maintain and operate a CEMS for measuring O₂ emissions discharged to the atmosphere constitutes violations of the Permits and the CAA for each day that such failure to properly maintain and operate the CEMS occurred.

D. RESPONDENT'S ADMISSIONS

43. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section I.C. of this CAFO; (iii) consents to any and all conditions specified in this CAFO and to the assessment of the civil administrative penalty under Section I.E. of this CAFO; (iv) waives any right to contest the allegations contained in Section I.C. of this CAFO; and (v) waives the right to appeal the proposed final order contained in this CAFO.

E. CIVIL ADMINISTRATIVE PENALTY

44. Respondent agrees to the assessment of a penalty in the amount of ONE HUNDRED FORTY-FIVE THOUSAND DOLLARS (\$145,000) as final settlement of the civil claims against Respondent arising under the Act as alleged in Section I.C. of this CAFO.

45. Respondent shall pay the assessed penalty no later than thirty (30) days from the effective date of this CAFO. The civil penalty shall be paid by remitting a certified or cashier's check, including the name and docket number of this case, for the amount, payable to "Treasurer, United States of America," (or be paid by one of the other methods listed below) and sent as follows:

Regular Mail:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077

St. Louis, MO 63197-9000

Overnight Mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077
St. Louis, MO 63101

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 31006
CTX Format

On Line Payment:

This payment option can be accessed from the information below:

www.pay.gov
Enter "sf01.1" in the search field
Open form and complete required fields

If clarification regarding a particular method of payment remittance is needed, contact the EPA Cincinnati Finance Center at 513-487-2091.

A copy of each check, or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent with a transmittal letter, indicating Respondent's name, the case title, and docket number, to both:

- a) Regional Hearing Clerk
Office of Regional Counsel (ORC-1)
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, California 94105

- b) Chief, Air Enforcement Office
Air Division (AIR-5)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105
Attn: Mark Sims (AIR-5)

46. Payment of the above civil administrative penalty shall not be used by Respondent or any other person as a tax deduction from Respondent's federal, state, or local taxes.

47. If Respondent fails to pay the assessed civil administrative penalty specified in Paragraph 44 by the deadline specified in Paragraph 45, then Respondent shall pay to EPA the stipulated penalty of \$500 for each day the penalty is late, which shall become due and payable upon EPA's written request. Such failure by Respondent may also subject Respondent to a civil action to collect any unpaid portion of the assessed penalty, together with interest, handling charges, and nonpayment penalties as set forth in Paragraph 48 below. In any such collection action, the validity, amount, and appropriateness of this CAFO or the penalty assessed hereunder are not subject to review.

48. Pursuant to 42 U.S.C. § 7413(d)(5) and 31 U.S.C. § 3717, Respondent shall pay the following amounts:

a. Interest: Any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within thirty (30) days of the effective date of this CAFO.

b. Handling Charge: Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid for any month in which any portion of the assessed penalties is more than 30 days past due.

c. Attorney Fees, Collection Costs, Nonpayment Penalty: Pursuant to 42 U.S.C. § 7413(d)(5), if Respondent fails to pay on a timely basis the full amount of the assessed penalty, interest, and handling charges, Respondent shall be liable for the United States' enforcement and collection expenses, including, but not limited to, attorney fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be ten percent (10%) of the aggregate amount of Respondent's outstanding or overdue penalties and nonpayment penalties accrued from the beginning of such quarter.

F. RETENTION OF RIGHTS

49. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liability for federal civil penalties for the violations and facts specifically alleged in Section I.C. of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in Section I.C. of this CAFO; or (ii) any criminal liability. EPA specifically reserves any and all authorities, rights, and remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address

any violation of this CAFO or any violation not specifically alleged in Section I.C. of this CAFO.

50. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty to comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits.

G. ATTORNEYS' FEES AND COSTS

51. Except as set forth in Paragraph 48(c) above, each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

H. EFFECTIVE DATE

52. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the final order contained in this CAFO, having been approved and issued by the Regional Judicial Officer, is filed.

I. BINDING EFFECT

53. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.

54. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

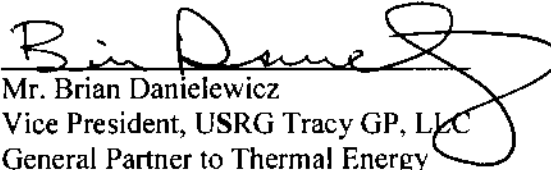
55. This Consent Agreement constitutes the entire agreement between the parties resolving this matter arising under the CAA.

56. This document constitutes an “enforcement response” as that term is used in EPA's Penalty Policy for the purposes of determining Respondent’s “full compliance history” as provided in Section 113(e) of the Act, 42 U.S.C. § 7413(e).

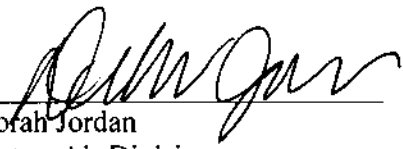
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FOR RESPONDENT, THERMAL ENERGY DEVELOPMENT PARTNERSHIP, L.P.:

Date: 1-8-13 By: 
Mr. Brian Danielewicz
Vice President, USRG Tracy GP, LLC
General Partner to Thermal Energy
Development Partnership, L.P.


FOR COMPLAINANT, EPA REGION IX:

Date: 1-18-13 By: 
Deborah Jordan
Director, Air Division
U.S. Environmental Protection
Agency, Region IX

II. FINAL ORDER

Complainant and Respondent, having entered into the foregoing Consent Agreement, IT IS HEREBY ORDERED that this CAFO (Docket No. CAA-09-2013- 0002) be entered, and that Respondent shall pay a civil administrative penalty in the amount of ONE HUNDRED FORTY-FIVE THOUSAND DOLLARS (\$145,000) and comply with the terms and conditions set forth in the Consent Agreement.

01/22/13
DATE


STEVEN L. JAWGIEL
Regional Judicial Officer
U.S. Environmental Protection
Agency, Region IX

CERTIFICATE OF SERVICE

I certify that the original of the foregoing Consent Agreement and Final Order was hand delivered to the Regional Hearing Clerk, United States Environmental Protection Agency – Region 9, 75 Hawthorne Street, San Francisco, California 94105, and that a true and correct copy of the Consent Agreement and Final Order was placed in the United States Mail, certified mail, return receipt requested, addressed as follows:

Mr. Brian Danielewicz
Vice President, USRG Tracy GP, LLC
General Partner to TEDP, L.P.
14800 West Schulte Road
Tracy, California 95304

Certified Mail Number: 7003 3110 0006 2000 9806

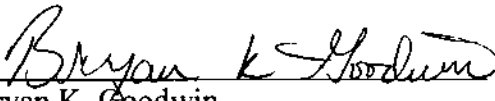
An additional copy was placed in the United States Mail, addressed as follows:

Mr. Robert Soran, Esq.
Downey Brand
621 Capitol Mall, 18th Floor
Sacramento, California 95814

In addition, a copy was hand delivered to:

Daniel Reich
Office of Regional Counsel
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, California 94105

Dated: 1/23/13


Bryan K. Goodwin
Regional Hearing Clerk
Office of Regional Counsel (ORC-1)
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, California 94105



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

JAN 18 2013

Mr. Brian Danielewicz
Vice President, USRG Tracy GP, LLC
General Partner to Thermal Energy Development Partnership, L.P.
14800 West Schulte Road
Tracy, California 95304

re: Thermal Energy Development Partnership – Tracy Facility

Dear Mr. Danielewicz:

Enclosed is your copy of the Consent Agreement and Final Order (“CAFO”) filed pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. §§ 7401-7671q. If you have any questions concerning the CAFO, please contact Mark Sims of my staff at (415) 972-3965 or Daniel Reich in the Office of Regional Counsel at (415) 972-3911.

Sincerely,

A handwritten signature in black ink, appearing to read "Deborah Jordan".

Deborah Jordan
Director, Air Division

Enclosure

cc: Mr. Seyed Sadredin (SJVAPCD)
Mr. James Ryden (CARB)
Mr. Robert Soran, Esq. (Downey Brand)