



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 16 2019

REPLY TO THE ATTENTION OF

VIA E-MAIL
RETURN RECEIPT REQUESTED

Mr. Paul M. Collins
One Michigan Avenue, Suite 900
Lansing, Michigan 48933
Email: collinsp@millercanfield.com

Dear Mr. Collins:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Grand Haven Board of Light & Power, docket no. **CAA-05-2019-0029**. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on

September 16, 2019.

Pursuant to paragraph 26 of the CAFO, Grand Haven Board of Light & Power must pay the civil penalty within 30 days of the filing date. Your check must display the case name and case docket number.

Please direct any questions regarding this case to Ian Cecala, Assistant Regional Counsel, (312) 353-5966.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sarah Marshall".

Sarah Marshall, Chief
Air Enforcement and Compliance Assurance Section (MI/WI)

Enclosure

cc: Ann Coyle, Regional Judicial Officer/via electronic mail
Regional Hearing Clerk/via electronic mail
Ian Cecala/via electronic mail
Jenine Camilleri/Michigan EGLE/via electronic mail
Heidi Hollenback/Michigan EGLE/via electronic mail

Consent Agreement and Final Order



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No.	CAA-05-2019-0029
)		
Grand Haven Board of Light & Power)	Proceeding to Assess a Civil Penalty	
Grand Haven, Michigan,)	Under Section 113(d) of the Clean Air Act,	
)	42 U.S.C. § 7413(d)	
Respondent.)		
_____)		

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 Grand Haven Board of Light & Power (GHBLP), a municipal utility doing business in Michigan.

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

National Emission Standards for Hazardous Air Pollutants

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. NESHAP Subpart UUUUU applies to coal-fired electric utility steam generating units (EGUs) pursuant to 40 C.F.R. §§ 63.9981, 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. GHBLP has represented that it received a one-year extension until April 16, 2016, under CAA Section 112(i)(3)(B), 42 U.S.C. § 7412(i)(3)(B) for compliance with this standard at the J.B. Sims Generating Station.

11. The NESHAP Subpart UUUUU, at 40 C.F.R. § 63.9991(a)(1), referencing Table 2 to NESHAP Subpart UUUUU, provides that an existing coal-fired unit that is not combusting low rank virgin coal must comply with a hydrogen chloride limit. Hydrogen chloride and hydrochloric acid are the same chemical compound and are referred to by the same chemical formula, HCl.

12. The NESHAP Subpart UUUUU, at 40 C.F.R. § 63.10021(a), provides that owners and operators must demonstrate continuous compliance with applicable emissions limits in Tables 1 through 4 according to the monitoring specified in Tables 6 and 7 to the subpart and in paragraphs 40 C.F.R. § 63.10021(b) through (g).

13. The NESHAP Subpart UUUUU, at Table 7, Item 4, states that units that use quarterly performance testing must demonstrate continuous compliance with the non-particulate matter (PM) applicable emissions limit in Table 1 or 2, including HCl.

14. The NESHAP Subpart UUUUU, at 40 C.F.R. § 63.10021(d) provides, among other things, that, if you use quarterly performance testing to demonstrate compliance with one or more applicable emissions limits in Table 1 or 2, owners and operators: (1) may skip performance testing in those quarters during which less than 168 boiler operating hours occur, except that a performance test must be conducted at least once every calendar year, and (2) must conduct the performance test as defined in Table 5 and calculate the results of the testing in units of the applicable emissions standard.

Enforcement of the CAA

15. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$47,357 per day of violation up to a total of \$378,852 for CAA violations that occurred after November 2, 2015, for which penalties are assessed on or after January 15, 2019, under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

16. 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.

17. 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

18. GHBLP is a “person” as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

19. GHBLP owns and operates a coal-fired EGU identified as “EU-UNIT-3_BLR” (Boiler #3) at the J.B. Sims Generating Station, 1231 North Third Street, Grand Haven, Michigan (the Facility). Boiler #3 was constructed in 1983 and has a capacity of 80 megawatts.

20. Boiler #3 is an existing “affected source” as defined in 40 C.F.R § 63.9982 and as such is subject to the requirements of NESHAP Subpart UUUUU.

21. On May 31, 2016, GHBLP conducted performance testing for HCl at Boiler #3 for the second quarter of 2016. The subsequent performance test GHBLP conducted was on May 31, 2017, for the second quarter of 2017. As such GHBLP failed to conduct required quarterly performance tests for HCl at the Facility for the third and fourth quarter of 2016, and for the first quarter of 2017.

22. On May 23, 2017, the Michigan Department of Environment, Great Lakes, and Energy (Michigan EGLE)¹ issued GHBLP a violation letter identifying violations of NESHAP Subpart UUUUU, at 40 C.F.R. §§ 63.10021(a), 63.10021(d)(1), 63.10021(d)(2), and Table 7(4).

¹ Formerly known as the Michigan Department of Environmental Quality (MDEQ).

23. On November 9, 2017, Michigan EGLE sent EPA a letter identifying the allegations and referring the matter to EPA for enforcement. EPA has not delegated enforcement authority of NESHAP Subpart UUUUU to the State of Michigan.

24. On September 25, 2018, EPA issued GHBLP a Finding of Violation alleging that, by failing to conduct required quarterly HCl performance tests across three calendar quarters, GHBLP violated 40 C.F.R. §§ 63.10021(a), 63.10021(d)(1), 63.10021(d)(2), and Table 7(4), and Section 112(i)(3) of the CAA, 42 U.S.C. § 7412(i)(3) at the Facility.

Civil Penalty

25. 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 the agreement to perform a supplemental environmental project, Complainant has determined that an appropriate civil penalty to settle this action is \$9,935.

26. Within 30 days after the effective date of this CAFO, Respondent must pay a \$9,935 civil penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

Or, for checks sent by express mail, by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101

The check must note Respondent's name and the docket number of this CAFO.

27. 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:

Attn: Compliance Tracker (ECA-18J)
Air Enforcement and Compliance Assurance Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Ian Cecala (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

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

29. If Respondent does not pay timely the civil penalty or any stipulated penalties due under paragraph 40, below, 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.

30. 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 attorney 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).

Supplemental Environment Project

31. Respondent must complete a supplemental environmental project (SEP) designed to protect public health and the environment by implementing an energy efficiency project described in paragraph 32, below.

32. Respondent must spend at least \$39,585 to replace high-pressure sodium lamps with energy efficient LED lamps along United States Highway 31 and other locations within the GHBLP service territory. These funds may be used for the cost of the replacement lighting fixtures and bulbs and/or for the installation.

33. Respondent certifies as follows:

I certify that Grand Haven Board of Light & Power is not required to perform or develop the SEP by any law, regulation, order, or agreement or as injunctive relief as of the date that I am signing this CAFO. I further certify that Grand Haven Board of Light & Power has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

I certify that Grand Haven Board of Light & Power is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. I further certify that, to the best of my knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP. For purposes of this certification, the term "open

federal financial assistance transaction” refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not expired.

34. EPA may inspect the lighting installation at any time to monitor Respondent’s compliance with this CAFO’s SEP requirements.

35. Respondent must submit a SEP completion report to EPA within 12 months of the effective date of this CAFO or by August 1, 2020, whichever is later. This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any problems completing the SEP and the actions taken to correct the problems;
- c. Itemized cost of goods and services used to complete the SEP 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 SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

36. Respondent must submit all notices and reports required by this CAFO by first-class mail to the Compliance Tracker of the Air Enforcement and Compliance Assurance Branch at the address provided in paragraph 27, above.

37. 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.

38. Following receipt of the SEP completion report described in paragraph 35, above, EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and EPA will seek stipulated penalties under paragraph 40.

39. 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. If Respondent does not complete the SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 40, below.

40. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO, Respondent must pay a stipulated penalty of \$40,000.
- b. If Respondent did not complete the SEP satisfactorily, but EPA determines that Respondent made good faith and timely efforts to complete the SEP and certified, with supporting documents, that it spent at least 90 percent of the amount set forth in paragraph 32, Respondent will not be liable for any stipulated penalty under subparagraph a, above.
- c. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in paragraph 32, Respondent must pay a stipulated penalty of \$10,000.
- d. If Respondent did not submit timely the SEP completion report, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$100	1 st through 30 th day
\$200	31 st through 60 th day
\$250	61 st day and beyond

41. EPA's determinations of whether Respondent completed the SEP satisfactorily and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

42. Respondent must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 26, above, and will pay interest and nonpayment penalties on any overdue amounts.

43. Any public statement that Respondent makes referring to the SEP must include the following language: "Grand Haven Board of Light & Power undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Grand Haven Board of Light & Power for violations of the Clean Air Act."

44. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

General Provisions

45. The parties consent to service of this CAFO by e-mail at the following e-mail addresses: cecala.ian@epa.gov (for Complainant), and collinsp@millercanfield.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

46. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO and EPA's Finding of Violation issued to Respondent on September 25, 2018, Docket No. EPA-5-18-MI-12. EPA's consent to this provision is based on information provided by Respondent as of the CAFO's effective date.

47. This 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.

48. 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 46, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

49. Respondent certifies that it is complying fully with the NESHAP Subpart UUUUU, 40 C.F.R. §§ 63.9980 through 63.10042.

50. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1).

51. 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).

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

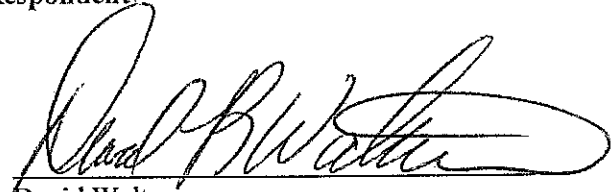
53. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

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

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

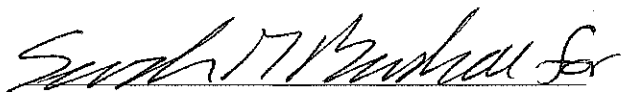
Grand Haven Board of Light & Power, Respondent.

July 19, 2019
Date


David Walters
General Manager
Grand Haven Board of Light & Power

United States Environmental Protection Agency, Complainant

9/12/19
Date



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

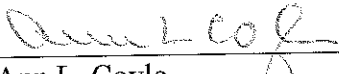
Consent Agreement and Final Order
In the Matter of: Grand Haven Board of Light & Power
Docket No. CAA-05-2019-0029

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.

9/13/19

Date



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

In the matter of: Grand Haven Board of Light & Power
Docket Number: CAA-05-2019-0029

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number CAA 05 2019 0029, which was filed on September 16, 2019, in the following manner to the following addressees:

Copy by E-mail to Respondent: Erik Booth
EBooth@ghblp.org

Copy by E-mail to Attorney for Complainant: Ian Cecala
Cecala.ian@epa.gov

Copy by E-mail to Attorney for Respondent: Paul Collins
collinsp@millercansfield.com

Copy by E-mail to Regional Judicial Officer: Ann Coyle
coyle.ann@epa.gov

Dated: September 16, 2019



LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5