



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

SEP 30 2019

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Richard R. Peffley
General Manager
Lansing Board of Water and Light
1232 Haco Drive
Lansing, Michigan 48912

Dear Mr. Peffley:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Lansing Board of Water and Light (LBWL), docket no. CAA-05-2019-0040. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on

9/30/2019.

Pursuant to paragraph 41 of the CAFO, LBWL must pay the civil penalty within 30 days of the filing date. Your electronic funds transfer must display the case name and case docket number.

Please direct any questions regarding this case to Kathleen Schnieders, Associate Regional Counsel at (312) 353-8912.

Sincerely,



Nathan Frank, Chief
Air Enforcement and Compliance Assurance Section (IL/IN)

Enclosure

cc: Ann Coyle, Regional Judicial Officer/C-14J
Regional Hearing Clerk/E-19J
Kathleen Schnieders/C-14J
Paul Collins, Miller Canfield
Jenine Camilleri, MDEQ

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5



In the Matter of:) Docket No. CAA-05-2019-0040
)
Lansing Board of Water and Light) Proceeding to Assess a Civil Penalty
Lansing, 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 Lansing Board of Water and Light (LBWL), a municipal utility doing business in Michigan. Respondent is a “person” as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

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.

9. The Regional Judicial Officer is authorized to ratify this CAFO which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(a) and 22.18(b).

Statutory and Regulatory Background

Prevention of Significant Deterioration

10. The Prevention of Significant Deterioration (PSD) provisions of Part C of Title I of the Act establish specific provisions applicable to the construction and modification of sources located in areas designated as either attainment or unclassifiable for purposes of meeting the NAAQS. *See* 42 U.S.C. §§ 7470-7492.

11. EPA delegated the State of Michigan the authority to issue PSD permits using the federal PSD rules at 40 CFR 52.21 (via delegation letter dated September 26, 1988).

12. On September 16, 2008, EPA conditionally approved the State of Michigan's PSD program under 40 CFR 52.21 (effective October 16, 2008). *73 Fed. Reg.* 53366. On March 25, 2010, EPA fully approved Michigan's PSD State Implementation Plan (SIP) provisions. *75 Fed. Reg.* 14352. The Michigan PSD SIP provisions are codified at Michigan Admin. Code R. 336.2801 to 336.2830.

13. The PSD regulations appearing at Michigan Admin. Code R. 336.2801 to 336.2830 were incorporated into and part of the Michigan SIP at the time of the alleged major modification at issue in this NOV/FOV, and they have been approved by EPA and are federally enforceable requirements. All citations to the PSD regulations herein refer to the provisions of the Michigan SIP as applicable at the time of the projects.

14. Michigan Admin. Code R. 336.2802(3) provides that no new major stationary source or major modification to which the R. 336.2810 to 336.2818 apply shall begin actual construction without a permit to install issued under R. 336.2801(1)(a) that states that the major stationary source or modification will meet those requirements. *See also* 40 C.F.R. § 52.21(i)(1).

15. Michigan Admin. Code R. 336.2802(4) provides that this part applied to the construction of a new major sources and major modifications to existing major sources in the following manner: (a) . . . a project is a major modification for a regulated new source pollutant if it causes both of the following types of emissions increase: (i) significant emissions increase and (ii) significant net emissions increase.

16. Michigan Admin. Code R. 336.2801(cc)(i)(A) defines a “major stationary source” as, among other things, a fossil fuel-fired steam electric plant of more than 250 million British Thermal Units per hour (mmbtu/hr) heat input that emits, or has the potential to emit, 100 tons per year (tpy) or more of any pollutant subject to regulation under the Act. *See also* 40 C.F.R § 52.21(b)(1)(i)(a).

17. Michigan Admin. Code R. 336.2801(aa)(i) defines a “major modification” as any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of a regulated pollutant and a significant net emissions increase of that pollutant from the major stationary source. *See also* 40 C.F.R § 52.21(b)(2)(i).

18. Michigan Admin. Code R. 336.2801(rr) defines “significant emissions increase” for a regulated new source review pollutant as an increase in emissions that is significant for that pollutant. *See also* 40 C.F.R. § 52.21(b)(40).

19. Michigan Admin. Code R. 336.2801 (qq) defines “significant”, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following pollutant emission rates: (A) Carbon monoxide: 100 tons per year. (B) Oxides of nitrogen: 40 tons per year. (C) Sulfur dioxide: 40 tons per year. (D) Particulate matter: 25 tons per year of particulate matter emissions; 15 tons per year of PM₁₀ emissions. *See also* 40 C.F.R. § 52.21(b)(23)(i).

Title V Requirements

20. 40 C.F.R. § 70.7(b) provides that no source subject to 40 C.F.R. Part 70 requirements may operate without a permit as specified in the Act. *See also* R 336.1210 of the Michigan Air Pollution Control Rules.

21. 40 C.F.R. § 70.5(a) and (c) require timely and complete permit applications for Title V permits with required information that must be submitted and 40 C.F.R. § 70.6 specifies required permit content. *See also* R 336.1210 of the Michigan Air Pollution Control Rules.

22. 40 C.F.R. § 70.5(b) provides that: “Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.” *See also* R 336.1210(2)(b) of the Michigan Air Pollution Control Rules.

Michigan's Title V Requirements

23. EPA promulgated final interim approval of Michigan's Title V program on January 10, 1997. *See* 62 *Fed. Reg.* 1387 (effective February 10, 1997) and 62 *Fed. Reg.* 34010 (effective July 18, 1997). EPA promulgated full approval of Michigan's Title V program on December 4, 2001. *See* 66 *Fed. Reg.* 62949. Michigan's Title V program became effective on November 30, 2001.

24. The Michigan regulations governing the Title V permitting program are codified at R 336, and are federally enforceable pursuant to Section 113(a)(3).

25. R 336.1210(1) provides that "a person shall not operate any emission unit located at a stationary source required to obtain a renewable operating permit under R 336.1211, except in compliance with all applicable terms and conditions of a renewable operating permit, unless a timely and administratively complete application for a renewable operating permit has been received by the department in accordance with the following provisions of [R 336.1210]."

26. R 336.1210(2)(b) provides that "any person who fails to submit any relevant facts or who has submitted incorrect information in an application for a renewable operating permit ... shall upon becoming aware of the failure or incorrect submittal promptly submit all supplementary facts or corrected information. Each submittal of any relevant facts or corrected information shall include a certification by a responsible official which states that, based on information and belief formed after a reasonable inquiry, the statements in the submittal are true, accurate, and complete."

27. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for CAA violations that occurred after January 12, 2009 through December 6, 2013, \$37,500 per day of violation up to a total of \$320,000 for CAA violations that occurred after December 6, 2013 through November 2, 2015,

and \$47,357 per day of violation up to a total of \$378,852 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.

28. 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.

29. 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

30. LBWL owns and operates Erickson Generating Station, a coal-fired electric generating facility at 3725 South Canal Road, Lansing, Michigan (Erickson Station).

31. The Erickson Station is located in Eaton County, Michigan, which was an area classified as attainment for all criteria pollutants for all time periods relevant to the violations cited herein.

32. The Erickson Station is a fossil fuel-fired steam electric plant with a potential to emit more than 100 tons per year of particulate matter, nitrogen oxides, carbon monoxide, and sulfur dioxide. The station consists of one coal-fired boiler (Unit 1) and one steam turbine for electricity generation. Unit 1 has a net generating capacity of 168 MW and was constructed in 1973.

33. The Erickson Station is a "fossil fuel-fired steam electric plant of more than 250 million British thermal units per hour." Therefore, the station constitutes a "major stationary

source” within the meaning of 40 C.F.R. § 52.21(b)(1)(i)(a) and Michigan Rule R 336.2801; and a “major emitting facility” within the meaning of Section 169(1) of the Act, 42 U.S.C. § 7479(1).

34. During an outage that occurred from approximately September 2010 to February 2011, LBWL replaced various boiler and turbine components at Erickson Station Unit 1, including, but not limited to, the secondary superheater and the economizer.

35. During an outage that occurred from approximately October 2012 to December 2012, LBWL replaced various boiler components at Erickson Station Unit 1, including, but not limited to, upgraded waterwall tubing.

36. In a March 13, 2015 Notice and Finding of Violation (NOV), EPA alleged that the physical changes and/or changes in the method of operation performed in each outage referred to in Paragraphs 34 and 35 above, resulted in a “significant net emissions increase”, as defined in the relevant PSD rules, and the Michigan SIP, of SO₂, NO_x, CO, and/or PM.

37. In the NOV EPA alleged that the physical changes and/or changes in the method of operation performed in each of these outages constituted a “major modification” under the PSD regulations of 40 C.F.R. § 52.21 and the Michigan SIP.

38. In the NOV EPA alleged that LBWL failed to comply with the PSD requirements of the Act and the Michigan SIP with respect to the major modifications and subsequent operations at Erickson Unit 1 when it undertook such major modifications without first obtaining a PSD permit for construction and operation of the modified unit and without installing and operating BACT for control of NO_x and/or SO₂ emissions in violation of PSD requirements, Section 165 of the Act, 42 U.S.C. § 7475, 40 C.F.R. § 52.21 and the Michigan SIP.

39. In the NOV EPA further alleged that LBWL failed and/or continues to fail to submit timely and complete Title V permit applications for the Erickson Station with information pertaining to the modifications referred to in Paragraph 34 and 35 above, and with information

concerning all applicable requirements, including, but not limited to, the requirement to apply, install and operate BACT for SO₂, NO_x, CO, and/or PM at the plant and also failed to supplement or correct the Title V permit applications for the plant in violation of Sections 502, 503, and 504 of the Act, 42 U.S.C. §§ 7661a, 7661b, and 7661c; the regulations at 40 C.F.R. Part 70, including, but not limited to, 40 C.F.R. §§ 70.1(b), 70.5(a), (b) and (c), 70.6 and 70.7(b), and Mich. Admin. R 336.1213. LBWL thereafter operated the Erickson Station without PSD requirements and without having an operating permit that requires compliance with PSD requirements or that contains a compliance plan for PSD requirements for which the Facility is not in compliance.

Civil Penalty

40. 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 agreement to the below specified mitigation, injunctive relief, and cooperation, Complainant has determined that an appropriate civil penalty to settle this action is \$150,000.

41. Within 30 days after the effective date of this CAFO, Respondent must pay a \$150,000 civil penalty by electronic funds transfer, payable to “Treasurer, United States of America,” and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045
*Field Tag 4200 of the Fedwire message should read:
“D68010727 Environmental Protection Agency”

in the comment or description field of the electronic funds transfer, state Respondent’s name and the docket number of this CAFO.

42. 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

Kathleen Schnieders (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

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

44. 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.

45. 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).

Definitions

46. “30-Day Rolling Average Emission Rate” means the emission rate for a Unit expressed in lb/mmBTU and calculated in accordance with the following procedure: first, sum the total pounds of pollutant emitted from the applicable Unit during the current Unit Operating Day and the previous 29 Unit Operating Days; second, sum the total heat input to the unit in mmBTU during the current Operating Day and the previous 29 Operating Days; and third, divide the total number of pounds of pollutant emitted during the 30 Operating Days by the total heat input during the 30 Operating Days. A new 30-Day Rolling Average Emission Rate shall be calculated for each new Unit Operating Day. Each 30-Day Rolling Average Emission Rate shall include all emissions of the applicable pollutant that occur during all periods within any Unit Operating Day, including emissions from startup, shutdown, and malfunction;

47. “CEMS” or “Continuous Emission Monitoring System” means the devices defined in 40 C.F.R. § 72.2 and installed and maintained as required by 40 C.F.R. Parts 60 and 75;

48. “Clean Air Act,” “CAA,” or “Act” means the federal Clean Air Act, 42 U.S.C. §§ 7401-7671q, and its implementing regulations;

49. “Continuously Operate” means that when a pollution control technology or combustion control is required to be continuously used at a Unit pursuant to this CAFO (including, but not limited to, SNCR, ESP, or Low NOx Combustion System), it shall be operated at all times such Unit is in operation, consistent with the technological limitations, manufacturers’ specifications, good engineering and maintenance practices, and good air

pollution control practices for minimizing emissions (as defined in 40 C.F.R. § 60.11(d)) for such equipment and the Unit;

50. “Day” shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this CAFO, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day;

51. “Respondent” means Lansing Board of Water and Light or LBWL;

52. “Eckert Station” means the Eckert Generating Station consisting of five boilers designated as Units 1, 3, 4, 5, and 6 (50.0, 51.3, 80.0, 80.0, and 80.0 MW_{gross} respectively), located in Ingham County, Michigan;

53. “Electrostatic Precipitator” or “ESP” means a device for removing particulate matter from combustion gases by imparting an electric charge to the particles and then attracting them to a metal plate or screen of opposite charge before the combustion gases are exhausted to the atmosphere;

54. “Emission Rate” means the number of pounds of a given pollutant emitted per million British thermal units of heat input (lb/mmBTU), measured in accordance with this CAFO;

55. “Erickson Station” means the Erickson Generating Station consisting of one coal-fired boiler designated as Unit 1 (168 MW_{gross}), located in Eaton County, Michigan;

56. “lb/mmBTU” means pound per million British thermal units;

57. “LBWL” means Lansing Board of Water and Light;

58. “Low NO_x Combustion System” means burners and associated combustion air control equipment, including Overfire Air (if installed at the Unit), which control mixing

characteristics of fuel and oxygen, thus restraining the formation of NO_x during combustion of fuel in the boiler;

59. “Malfunction” means a failure to operate in a normal or usual manner by any air pollution control equipment, process equipment, or a process, which is sudden, infrequent, and not reasonably preventable. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

60. “Michigan SIP” means the Michigan State Implementation Plan, and any amendments thereto, as approved by EPA pursuant to Section 110 of the Act, 42 U.S.C. § 7410;

61. “NO_x” means oxides of nitrogen;

62. “NO_x Allowance” means an authorization to emit a specified amount of NO_x that is allocated or issued under an emissions trading or marketable permit program of any kind established under the Clean Air Act or applicable State Implementation Plan;

63. “PM” means total filterable particulate matter, measured in accordance with the provisions of this CAFO;

64. “PM Emission Rate” means the number of pounds of PM emitted per million BTU of heat input (lb/mmBTU);

65. “SNCR” or “Selective Non-Catalytic Reduction” means an air pollution control device for the reduction of NO_x emissions through the injection of ammonia or urea into the boiler;

66. “SO₂” means sulfur dioxide, as measured in accordance with the provisions of this CAFO;

67. “SO₂ Allowance” means an authorization to emit a specified amount of SO₂ that is allocated or issued under an emissions trading or marketable permit program of any kind established under the Clean Air Act or applicable Michigan State Implementation Plan;

68. “Surrender” or “Surrender of Allowances” means, for purposes of NO_x or SO₂ Allowances, permanently surrendering allowances from the accounts administered by EPA and the State of Michigan, if applicable, so that such allowances can never be used thereafter to meet any compliance requirements under the CAA, a state implementation plan, or this CAFO;

69. “System” means, collectively, the Eckert Station and Erickson Station;

70. “System-Wide Annual Tonnage Limitation” for a pollutant means the sum of the tons of the pollutant emitted from each of the Eckert and Erickson Units including, without limitations, all tons of that pollutant emitted during periods of startup, shutdown, and malfunction, in the designated year;

71. “Title V Permit” means the permit required of major sources pursuant to Subchapter V of the Act, 42 U.S.C. §§ 7661-7661e;

72. “Unit” means, collectively, the coal pulverizer, stationary equipment that feeds coal to the boiler, the boiler that produces steam for the steam turbine, the steam turbine, the generator, the equipment necessary to operate the generator, steam turbine, and boiler, and all ancillary equipment, including pollution control equipment and systems necessary for production of electricity. An electric steam generating station may be comprised of one or more Units; and

73. “Unit Operating Day” means any Day on which a Unit fires fuel in the boiler.

Conditions

Emission Rates

74. Commencing no later than 30 Days from the effective date of this CAFO, and continuing until the Unit is retired on or before December 31, 2025¹, LBWL shall Continuously

¹ In an August 2, 2017 settlement agreement with the Sierra Club, to which the United States was not a party, LBWL made a commitment to retire Erickson Unit 1.

Operate the ESPs on Erickson Unit 1 so that the Unit achieves and maintains a PM Emission Rate of no greater than 0.030 lb/mmBTU.

75. Commencing no later than 30 Days from the effective date of this CAFO, and continuing until the Unit is retired on or before December 31, 2025, LBWL shall Continuously Operate the existing SNCR and Low NOx Combustion System at Erickson Unit 1 so that the Unit achieves and maintains a 30-Day Rolling Average Emission Rate of NOx of no greater than 0.170 lb/mmBTU.

76. Commencing no later than 30 Days from the effective date of this CAFO, and continuing until the Unit is retired on or before December 31, 2025, LBWL shall operate Erickson Unit 1 so that the Unit achieves and maintains a 30-Day Rolling Average Emission Rate of SO₂ of no greater than 0.749 lb/mmBTU.

System-Wide Annual Tonnage Limitations

77. For each calendar year as specified below, LBWL's System shall not exceed the corresponding System-Wide Annual Tonnage Limitation for NOx specified below:

Calendar Years	System-Wide Annual Tonnage Limitation for NOx
2019 through 2020	1,800
2021 through 2025	1,100*
2026 and beyond	350*

* Beginning January 1, 2021, and thereafter, "System-Wide" limitations in this paragraph apply only to the existing electric generating system at Erickson Station, identified in Paragraph 55.

78. For each calendar year as specified below, LBWL's System shall not exceed the corresponding System-Wide Annual Tonnage Limitation for SO₂ specified below:

Calendar Years	System-Wide Annual Tonnage Limitation for SO₂
2019 through 2020	4,700
2021 through 2025	3,000*
2026 and beyond	250*

* Beginning January 1, 2021, and thereafter, “System-Wide” limitations in this paragraph apply only to the existing electric generating system at Erickson Station, identified in Paragraph 55.

Monitoring Requirements

79. For purposes of determining compliance with any System-Wide Annual Tonnage Limitation for each NO_x and SO₂, LBWL shall use NO_x and SO₂ emission data obtained from a CEMS in accordance with the procedures specified in 40 C.F.R. Part 75.

80. In determining a 30-Day Rolling Average Emission Rate for NO_x, LBWL shall use NO_x emission data obtained from a CEMS in accordance with the procedures of 40 C.F.R. Part 75, except that the NO_x emissions data need not be bias adjusted and the missing data substitution procedures of 40 C.F.R. Part 75 shall not apply to such determinations. Diluent capping (i.e., 5% CO₂) will be applied to the NO_x emission rate for any hours where the measured CO₂ concentration is less than 5% following the procedures in 40 C.F.R. Part 75, Appendix F, Section 3.3.4.1.

81. In determining a 30-Day Rolling Average Emission Rate for SO₂, LBWL shall use SO₂ emission data obtained from a CEMS in accordance with the procedures of 40 C.F.R. Part 75, except that the SO₂ emissions data need not be bias adjusted and the missing data substitution procedures of 40 C.F.R. Part 75 shall not apply to such determinations. Diluent capping (i.e., 5% CO₂) will be applied to the SO₂ emission rate for any hours where the measured CO₂ concentration is less than 5% following the procedures in 40 C.F.R. Part 75, Appendix F, Section 3.3.4.1.

82. Within 12 calendar months from the effective date of this CAFO, LBWL shall conduct a stack test for PM at the Erickson Unit and shall conduct annual stack tests for PM at the Erickson Unit thereafter or until the Erickson Unit is Retired in accordance with Section IV (Compliance Requirements) of this CAFO. LBWL shall (a) conduct the PM stack test using EPA Method 5 (filterable portion only) or any alternate method approved by EPA under the terms of this CAFO. Each stack test shall consist of three separate runs performed under representative operating conditions not including periods of startup, shutdown, or malfunction. The sampling time for each run shall be at least 60 minutes and the volume of each run shall be at least 0.85 dry standard cubic meters (30 dry standard cubic feet). LBWL shall ensure that the PM Emission Rate from the stack test results is calculated in accordance with 40 C.F.R. §60.8(f). Stack testing for particulate performed pursuant to 40 CFR 63, Subpart UUUUU can be used to satisfy this requirement.

83. LBWL shall submit to EPA the results of each PM stack test within 60 Days of completion of each test. LBWL shall submit such results to EPA via EPA's Compliance and Emissions Data Reporting Interface (CEDRI), which can be accessed through EPA's Central Data Exchange (CDX) (http://cdx.epa.gov/epa_home.asp). Test data shall be submitted in a file format generated through the use of the EPA's Electronic Reporting Tool (ERT) (<http://www.epa.gov/ttn/chief/ert/index.html>) or in an electronic file format consistent with the extensible markup language (XML) schema listed on the EPA's ERT website. As an alternative, test reports may be submitted in portable document format (PDF) through EPA's Emissions Collection and Monitoring Plan System (ECMPS) or alternative method as required by 40 CFR 63, Subpart UUUUU.

Allowance Surrender

84. LBWL shall not use NO_x or SO₂ Allowances to comply with any requirement of this CAFO, including by claiming compliance with any emission limitation required by this CAFO by using, tendering, or otherwise applying NO_x or SO₂ Allowances to offset any excess emissions.

85. Beginning in calendar year 2019 and continuing each calendar year thereafter, LBWL shall not sell, bank, trade, or transfer its interest in any NO_x or SO₂ Allowances allocated to each Eckert Unit and Erickson Unit 1, except as otherwise provided in this CAFO. Nothing in this CAFO shall restrict LBWL's ability to transfer NO_x or SO₂ Allowances between LBWL-owned generating units.

86. Beginning in calendar year 2019, and continuing each calendar year thereafter, LBWL shall Surrender all NO_x and SO₂ Allowances allocated to each Eckert Unit and Erickson Unit 1 for any calendar year that LBWL does not need to meet federal and/or state CAA regulatory requirements for those Units. Nothing in this CAFO shall restrict LBWL's ability to transfer NO_x or SO₂ allowances among LBWL-owned generating units.

87. Nothing in this CAFO shall prevent LBWL from purchasing or otherwise obtaining NO_x or SO₂ Allowances from another source for purposes of complying with federal and/or state CAA regulatory requirements to the extent otherwise allowed by law.

Super-Compliant NO_x and SO₂ Allowances

88. Notwithstanding Paragraph 86, and provided that LBWL is also in compliance for that calendar year with all emission limitations for NO_x and SO₂ set forth in this CAFO, in each calendar year beginning in 2019 and continuing thereafter, LBWL may sell, bank, use, trade, or transfer NO_x Allowances allocated to each Eckert and Erickson Unit that are made available in the calendar year solely as a result of:

- a. the installation and operation of any NO_x and SO₂ air pollution control equipment that is not otherwise required under this CAFO and is not otherwise required by law; or
- b. achievement and maintenance of an Emission Rate below an applicable 30-Day Rolling Average Emission Rate and System-Wide Tonnage Limitation.

89. LBWL shall timely report the generation of such Super-Compliant Allowances in accordance with Paragraph 98.

90. LBWL shall Surrender all NO_x and SO₂ Allowances required to be Surrendered by June 30 of the immediately following calendar year.

91. For all Allowances required to be Surrendered, LBWL shall, with respect to the Allowances that LBWL is to Surrender, ensure that an Allowance transfer request form is first submitted to EPA's Office of Air and Radiation's Clean Air Markets Division directing the transfer of such Allowances to the EPA Enforcement Surrender Account or to any other EPA account that EPA may direct in writing. Such Allowance transfer requests may be made in an electronic manner using the EPA's Clean Air Markets Division Business System, or similar system provided by EPA. As part of submitting these transfer requests, LBWL shall ensure that the transfer of its Allowances are irrevocably authorized and that the source and location of the Allowances being Surrendered are identified by name of account and any applicable serial or other identification numbers or station names.

Application for Clean Air Act Permits

92. Within 365 Days from effective date of this CAFO, LBWL shall apply to Michigan Department of Environmental Quality (MDEQ) to permanently include the requirements and limitations of this CAFO into a federally-enforceable permit or request a site-specific amendment to the Michigan SIP, such that the requirements and limitations enumerated

in these Paragraphs become and remain “applicable requirements” as that term is defined in 40 C.F.R. Part 70.2.

93. Within one year from the issuance of the federally-enforceable permit(s) required under Paragraph 92 above, LBWL shall apply to MDEQ for a modification of its Title V Permit to incorporate the conditions set forth in the permits and the conditions of this CAFO. Nothing in this CAFO affect MDEQ’s authority to establish permit requirements more stringent than and/or in addition to those specified herein.

94. LBWL shall provide the United States with a copy of the permit application for all Permits or SIP amendment required under this CAFO, as well as a copy of any resulting permit or amendment proposed as a result of such application, to allow for timely participation in any public comment opportunity.

Prohibition on Netting Credits

95. Emission reductions that result from actions to be taken by LBWL to comply with the requirements of this CAFO shall not be considered as a creditable contemporaneous emission decrease for the purpose of obtaining a Netting credit or offset under the CAA’s Nonattainment NSR and PSD programs, and shall not be used in any way to determine whether or not a project would result in either a “significant emissions increase” or a “significant net emissions increase” under the Nonattainment NSR or PSD programs.

96. The limitations on the generation and use of Netting credits and offsets set forth in the previous Paragraph do not apply to emission reductions achieved by a Unit that are greater than those required under this CAFO for that same Unit. For purposes of this Paragraph, emission reductions from a Unit are greater than those required under this CAFO if they result from such Unit’s compliance with federally enforceable emission limits that are more stringent

than those limits imposed on the Unit under this CAFO and under applicable provisions of the CAA or the Michigan SIP.

97. Nothing in this CAFO is intended to preclude the emission reductions generated under this CAFO from being considered by the applicable state regulatory agency or EPA for the purpose of attainment demonstrations submitted pursuant to Section 110 of the Act, 42 U.S.C. § 7410, or in determining impacts on National Ambient Air Quality Standards, PSD increment, or air quality related values, including visibility, in a Class I area.

Reporting

98. Beginning with the calendar half period ending December 31, 2019 and ending upon retirement of Erickson Unit 1, LBWL shall submit to EPA semi-annual reports by September 15 for the period January through June and March 15 for the period July through December). The reports shall include all information necessary to assess compliance with this CAFO.

99. LBWL shall send all 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 42 above.

Environmental Mitigation

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

101. Respondent shall implement the mitigation project described in Appendix A of this CAFO. Respondent must spend at least \$250,000 on the proposed mitigation project.

102. Respondent must complete the mitigation project within 3 years from the date of entry of this CAFO.

103. With regard to the Mitigation Project, Respondent certifies the truth and accuracy of each of the following:

- a. That, as of the date of executing this Decree, Respondent is not required to perform or develop the Mitigation Project by any federal, state, or local law or regulation and is not required to perform or develop the Mitigation Project by agreement, grant, or as injunctive relief awarded in any other action in any forum;
- b. That the Mitigation Project is not a Mitigation Project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Decree;
- c. That Respondent has not received and will not receive credit for the Mitigation Project in any other enforcement action; and
- d. That Respondent shall neither generate nor use any pollutant reductions from the Mitigation Project as netting reductions, pollutant offsets, or to apply for, obtain, trade, or sell any pollutant reduction credits.

104. EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's mitigation project requirements.

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

106. Within 90 calendar days from the effective date of this CAFO, Respondent shall submit to EPA for review a Mitigation Project Plan (Plan) that includes, at a minimum the following information:

- a. A detailed description of the Project;

- b. A plan for implementing the Project;
- c. A summary-level budget for the Project; and
- d. A time line for implementation of the Project

Each of these items will address, at a minimum, the steps to be taken during the next 90 days of the project, and each will be supplemented with additional detail in 90-day increments, thereafter as needed.

107. Respondent shall submit updates on the progress of the mitigation projects with the Semi-annual reports required by Paragraph 98.

108. Within 60 calendar days of completion of the mitigation project or projects, Respondent shall submit a Project completion report to EPA that contains the following information:

- a. Detailed description of the mitigation projects, 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 projects 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 projects in compliance with this CAFO; and
- e. Description and quantification, to the extent feasible, of the environmental and public health benefits resulting from the mitigation projects.

109. 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 42 above.

110. 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.

111. Following receipt of the mitigation project completion report described in Paragraph 108 above, EPA shall notify Respondent in writing that:

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

112. 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

113. If Respondent fails to undertake or complete any of the mitigation projects above, the resolution of civil penalty liability in Paragraph 117 will not apply. EPA's determinations of whether Respondent completed the mitigation project satisfactorily and whether Respondent made good faith and timely efforts to complete the mitigation project will bind Respondent.

114. Any public statement that Respondent makes referring to the mitigation project must include the following language: "LBWL undertook this project under the settlement of the

United States Environmental Protection Agency's enforcement action against LBWL for violations of under the Clean Air Act."

General Provisions

115. If Respondent fails to undertake or complete any of the conditions or the mitigation projects, above, the resolution of civil penalty liability in Paragraph 117 will not apply. EPA's determinations of whether Respondent completed the mitigation project satisfactorily and whether Respondent made good faith and timely efforts will bind Respondent.

116. Consistent with the Standing Order Authorizing E-Mail Service of Orders and Other Documents Issued by the Regional Administrator or Regional Judicial Officer under the Consolidated Rules, dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following e-mail addresses: schnieders.kathleen@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.

117. Respondent's full compliance with this Consent Agreement shall only resolve Respondent's liability for federal civil penalties.

118. 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.

119. 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 117, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

120. Respondent certifies that it is complying fully with the CAA.

121. 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).

122. Respondent agrees that the time period from the Effective Date of this Agreement until all of the conditions specified in Paragraphs 74 through 97 are completed (the “Tolling Period”) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by Complainant on any claims (the “Tolled Claims”) set forth in **“Factual Allegations and Alleged Violations,”** Paragraphs 30 through 39, above. Respondent shall not assert, plead, or raise in any fashion, whether by answer, motion or otherwise, any defense of laches, estoppel, or waiver, or other similar equitable defense based on the running of any statute of limitations or the passage of time during the Tolling Period in any action brought on the Tolled Claims.

123. From the Effective Date of this Agreement until the end of the Tolling Period, as set out in Paragraph 122, Respondent must give written notice and a copy of this Agreement to any successors in interest prior to any transfer of ownership or control of any portion of or interest in the Erickson Generating Station. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to the EPA. In the event of any such transfer, assignment, or delegation, Respondent shall not be released from the obligations or liabilities of this Agreement unless the EPA has provided written approval of the release of said obligations or liabilities.

124. 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.

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

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

Lansing Board of Water & Light, Respondent

9-27-2019
Date

Richard R. Peffley
Richard R. Peffley, General Manager
Lansing Board of Water and Light

9-27-2019
Date

M. Denise Griffin
M. Denise Griffin, Corporate Secretary
Lansing Board of Water and Light

APPROVED
W. Mark W. [Signature]
BOARD OF WATER & LIGHT
LEGAL COUNSEL
Date 9-26-2019

United States Environmental Protection Agency, Complainant

9/30/2019
Date

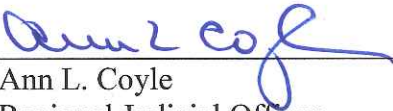
Michael D. Harris
Michael D. Harris
Acting Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: Lansing Board of Water & Light
Docket No. CAA-05-2019-0040

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.

9/30/19
Date


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

**APPENDIX A:
Environmental Mitigation Projects**

The Lansing Board of Water & Light (LBWL) agrees to spend not less than \$250,000 (Project Dollars) by the end of fiscal year 2021 (June 30, 2021) implementing either or both of the following mitigation projects:

- 1.
2. Fleet Plug-In Hybrid Electric or other Super Ultra Low Emission Vehicles (defined as 90% lower than the average gasoline powered vehicles). To improve air quality, Respondent shall replace at least two (2) gas or diesel-powered vehicles in its fleet with Plug-in hybrid electric vehicles (PHEVs) or other Super Ultra Low Emission vehicles (SULEVs). With respect to costs associated with vehicles, LBWL shall only receive Project Dollar credit for the incremental cost of the PHEVs or SULEVs as compared to the cost of a newly manufactured, similar motor vehicle powered by a conventional diesel or gasoline engine. LBWL may also receive Project Dollar credit for costs associated with infrastructure needed to support such Project.
3. Customer Plug-In Hybrid Electric or other Super Ultra Low Emission Vehicles. To improve air quality, Respondent shall perform a mitigation project to effectuate the replacement of the City of Lansing, other municipal customers, or non-profit customers gas or diesel-powered fleet vehicles with PHEVs or SULEVs. With respect to costs associated with vehicles, LBWL shall only provide for the acquisition of vehicles to the parties identified above (and receive Project Dollar credit) for the incremental cost of the PHEVs or SULEVs as compared to the cost of a newly manufactured, similar motor vehicle powered by a conventional diesel or gasoline engine. LBWL may also provide for the acquisition of vehicles to the parties identified above (and receive Project Dollar

credit) for costs associated with infrastructure needed to support such Project, including additional tools and training necessary to maintain the PHEVs or SULEVs.

Administrative costs must be capped at 10% of total project costs.

The Mitigation Project will result in a reduction of NOx and Particulate Matter (PM) emissions to address alleged excess emissions from Erickson and help alleviate health concerns associated with such emissions and redress a portion of the alleged excess emissions.

Funds used for environmental mitigation projects under this agreement shall be in addition to the Sustainability Program defined in Paragraph II (8) of the Settlement Agreement between Lansing Board of Water and Light and Sierra Club, August 2, 2017.

Consent Agreement and Final Order
In the matter of: **Lansing Board of Water and Light**
Docket Number: **CAA-05-2019-0040**

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 0040 which was filed on 9/30/2019, in the following manner to the following addressees:

Copy by E-mail to Respondent: Paul M. Collins
Miller Canfield
collinsp@millercanfield.com

Copy by E-mail to Attorney for Complainant: Kathleen Schnieders
Schnieders.kathleen@epa.gov

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

Copy by E-mail to State Contacts: Jenine Camilleri
Enforcement Unit Supervisor, AQD
Michigan Department of Environmental Quality
camillerij@michigan.gov

Brad Myott
District Supervisor, AQD
Michigan Department of Environmental Quality
myottb@michigan.gov

Dated: September 30, 2019



LaDawn Whitehead

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