



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

SEP 26 2018

REPLY TO THE ATTENTION OF:

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Michael Twomley, Plant Manager  
DTE Energy – Monroe Power Plant  
3500 East Front Street  
Monroe, Michigan 48161

Dear Twomley:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves DTE Energy Company, docket no. CAA-05-2018-0024. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on September 26, 2018.

Pursuant to paragraph 26 of the CAFO, DTE Energy Company must pay the civil penalty within 30 days of the filing date. Your cashier's or certified check must display the case name and case docket number.

Please direct any questions regarding this case to Susan Prout, Associate Regional Counsel at (312) 353-1029.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah Marshall".

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

Enclosure

cc: Ann Coyle, Regional Judicial Officer/C-14J  
Regional Hearing Clerk/E-19J  
Susan Prout/C-14J  
Jenine Camilleri, MDEQ  
Scott Miller, MDEQ

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of:

DTE Energy Company  
Monroe, Michigan,

Respondent.

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Docket No.

CAA-05-2018-0024

Proceeding to Assess a Civil Penalty  
Under Section 113(d) of the Clean Air Act,  
42 U.S.C. § 7413(d)

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 Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is DTE Energy Company (DTE), a corporation 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**

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

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

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

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

13. The NESHAP Subpart UUUUU, at 40 C.F.R. § 63.9991(a)(1), referencing Table 2 to NESHAP Subpart UUUUU, states that an existing coal-fired unit that is not combusting low rank virgin coal must comply with a mercury (Hg) emission limit of 1.2 lb/TBtu.

14. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$46,192 per day of violation up to a total of \$369,532 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.

15. 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.

16. 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**

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

18. DTE owns and operates four coal-fired electric utility steam generating units identified in the Facility's Renewable Operating Permit (ROP) as "EU-UNIT1-S1" (Unit 1), "EU-UNIT2-S1" (Unit 2), "EU-UNIT3-S1" (Unit 3), "EU-UNIT4-S1" (Unit 4) at 3500 East Front Street, Monroe, Michigan. Hg emissions from Units 1 through 4 at the Monroe Power Plant are continuously monitored with a sorbent trap monitoring system.

19. On September 15, 2016, in its ROP Semiannual Compliance Certification Report, DTE reported a deviation of Unit 2 from the Hg emission of 1.2 lb/TBtu, that occurred from May 22, 2016 through June 23, 2016. The duration of this deviation was 33 days.

20. DTE discovered the deviation identified in Paragraph 19 above on June 9, 2016. DTE reported this emission exceedance 68 business days after the date of discovery.

21. On September 23, 2016, DTE reported to the Michigan Department of Environmental Quality (MDEQ) that a second deviation of Unit 2 from the Hg emission limit of 1.2 lb/TBtu occurred from August 5, 2016 through August 22, 2016. The duration of this deviation was 18 days.

22. On February 14, 2017, MDEQ referred the matter to EPA after determining they were not delegated the authority to enforce NESHAP Subpart UUUUU.

23. By exceeding the Hg emission limit during the time periods starting on May 22, 2016, and ending on June 23, 2016, and starting on August 5, 2016, and ending on August 22, 2016, DTE violated 40 C.F.R. § 63.9991(a)(1).

24. By failing to operate and maintain the air pollution control system associated with Unit 2 with good air pollution control practices for minimizing emissions, DTE violated 40 C.F.R. § 63.10000(b).

#### **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 cooperation, Complainant has determined that an appropriate civil penalty to settle this action is \$120,000.

26. Within 30 days after the effective date of this CAFO, Respondent must pay a \$120,000 civil penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

For Regular Mail:

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

For Express Mail:

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

Susan Prout (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. Respondent must pay the following on any amount overdue under this CAFO.

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

#### **General Provisions**

30. 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: [prout.susan@epa.gov](mailto:prout.susan@epa.gov) (for Complainant), and [andrea.hayden@dteenergy.com](mailto:andrea.hayden@dteenergy.com) (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

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

32. 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.

33. 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 31, above,

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

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

35. 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).

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

37. 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.

38. Each party agrees to bear its own costs and attorneys fees in this action.

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




**DTE Energy Company, Respondent**

August 18, 2018  
Date

Michael Lowley  
DTE Energy Company

**United States Environmental Protection Agency, Complainant**

9/24/18  
Date

  
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Edward Nam  
Director  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5

**Consent Agreement and Final Order**  
**In the Matter of: DTE Energy Company**  
**Docket No. CAA-05-2018-0024**

**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.

September 25, 2018  
Date

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

Consent Agreement and Final Order  
In the matter of: *DTE Energy Company*  
Docket Number: CAA-05-2018-0024

**CERTIFICATE OF SERVICE**

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number CAA-05-2018-0024, which was filed on September 26, 2018, in the following manner to the following addressees:

Copy by Certified Mail to  
Respondent:

Michael Twomley, Plant Manager  
DTE Energy – Monroe Power Plant  
3500 East Front Street  
Monroe, Michigan 48161

Copy by E-mail to  
Attorney for Complainant:

Susan Prout  
[prout.susan@epa.gov](mailto:prout.susan@epa.gov)

Copy by E-mail to  
Attorney for Respondent:

Andrea Hayden, General Counsel  
DTE Energy  
[andrea.hayden@dteenergy.com](mailto:andrea.hayden@dteenergy.com)

Copy by E-mail to  
Regional Judicial Officer:

Ann Coyle  
[coyle.ann@epa.gov](mailto:coyle.ann@epa.gov)

Dated: September 26, 2018

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