



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

SEP 30 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 Lansing Board of Water & Light – Eckert Station, docket no. CAA-05-2019-0036. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on September 30, 2019.

Pursuant to paragraph 30 of the CAFO, Lansing Board of Water & Light 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 Kathleen Schnieders, Associate Regional Counsel, (312)353-8912.

Sincerely,

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

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

Enclosure

cc: Ann Coyle, Regional Judicial Officer/C-14J
Regional Hearing Clerk/E-19J
Kathleen Schnieders/C-14J
Jenine Camilleri/via electronic mail

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

CAA-05-2019-0036

In the Matter of:)	Docket No.
)	
Lansing Board of Water & 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 & Light (LBWL), 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, an 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 NESHAP for Coal- and Oil-Fired Electric Utility Steam Generating Units applies to coal-fired electric utility steam generating units

11. 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. LBWL received a one-year extension for the Eckert Station until April 16, 2016, under CAA Section 112(i)(3)(B), 42 U.S.C. § 7412(i)(3)(B) for compliance with these requirements

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. 40 C.F.R. § 63.10010(g) states that if a mercury sorbent trap monitoring system is used, it must be installed, certified, operated, maintained and the data must be quality-assured in

accordance with the NESHAP Subpart UUUUU Appendix A Hg Monitoring Provisions (Hg Monitoring Provisions).

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

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

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

17. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$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.

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

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

Factual Allegations and Alleged Violations

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

21. LBWL owns and operates three coal-fired electric utility steam generating units identified as "EUBOILER4" (Unit 4); "EUBOILER5" (Unit 5); and "EUBOILER6" (Unit 6) located at the Eckert Station, at 601 Island Avenue, Lansing, Michigan.

22. Mercury emissions from Units 4, 5, and 6 are each continuously monitored with a sorbent trap monitoring system.

23. In Semi-Annual Compliance Reports required by NESHAP Subpart UUUUU, LBWL reported downtime of the continuous mercury emissions monitoring systems for Units 4 and 5 as a percent of total operating time for the semi-annual reporting period. The percent downtime given in each report can be found in Table 1, below:

Table 1: Reported Sorbent Trap Monitoring System Downtime

Semi-annual Reporting Period	Unit 4 Downtime	Unit 5 Downtime
April 15, 2016 – December 31, 2016*	12.38%	1.71%
January 1, 2017 – June 30, 2017	34.88%	22.14%
July 1, 2017 – December 31, 2017	19.58%	9.48%
January 1, 2018 – June 30, 2018	6.49%	36.96%

*LBWL became subject to NESHAP Subpart UUUUU on April 15, 2016.

24. On April 5, 2018, the Michigan Department of Environment, Great Lakes, and Energy referred the matter to EPA after determining they were not delegated the authority to enforce NESHAP Subpart UUUUU.

25. By failing to operate the monitoring system and collect data at all required intervals at all times that Units 4 and 5 were operating during the January 1, 2017 – June 30, 2018 reporting periods, LBWL has violated 40 C.F.R. § 63.10020(b) and Section 112(i)(3) of the CAA, 42 U.S.C. § 7412(i)(3).

26. By failing to operate and maintain the continuous monitoring systems associated with mercury emissions at Units 4 and 5 using good air pollution control practices during the January 1, 2017 – June 30, 2018 reporting periods, LBWL has violated 40 C.F.R. §§ 63.8(c) and 63.10000(b) and Section 112(i)(3) of the CAA, 42 U.S.C. § 7412(i)(3).

27. On September 28, 2018, EPA issued to LBWL a Finding of Violation alleging that it violated NESHAP Subpart UUUUU by failing to operate the monitoring system and collect data as required at the Eckert Station.

28. On October 26, 2018, representatives of LBWL and EPA discussed the September 28, 2018 Finding of Violation.

Civil Penalty

29. 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, LBWL's cooperation and prompt return to compliance, and agreement to perform a supplemental environmental project, Complainant has determined that an appropriate civil penalty to settle this action is \$17,500.

30. Within 30 days after the effective date of this CAFO, Respondent must pay a \$17,500 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.

31. 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)
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

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

33. 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.

34. 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).

Supplemental Environment Project

35. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment and public health by reducing emissions of Hg and other associated pollutants and preparing a school building in the Lansing School District for renewable energy generation.

36. Respondent shall implement the SEP described in Appendix A of this CAFO. Respondent must spend at least \$60,000 on the proposed mitigation project.
37. Respondent must complete the SEP within 24 months from the date of entry of this CAFO.
38. With regard to the SEP, Respondent certifies the truth and accuracy of each of the following:
- a. That, as of the date of executing this CAFO, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;
 - b. That the SEP is not a Project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this CAFO;
 - c. That Respondent has not received and will not receive credit for the SEP in any other enforcement action; and
 - d. That Respondent shall neither generate nor use any pollutant reductions from the SEP as netting reductions, pollutant offsets, or to apply for, obtain, trade, or sell any pollutant reduction credits.
39. EPA may inspect the project site or correspond with the relevant staff at the implementing organization at any time to monitor Respondent's compliance with this CAFO's SEP requirements.
40. 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.

41. Within 150 calendar days from the effective date of this CAFO, Respondent shall submit to EPA for review a SEP 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 SEP, and each will be supplemented with additional detail in semi-annual increments, thereafter as needed.

42. Within 90 calendar days of completion of the SEP, Respondent shall submit a SEP Completion Report to EPA that contains the following information:

- a. Detailed description of the SEP, 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 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 and quantification, to the extent feasible, of the environmental and public health benefits resulting from the SEP.

43. 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 31.

44. 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.

45. Following receipt of the SEP completion report described in Paragraph 42 above, EPA shall 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.

46. 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

47. If Respondent fails to undertake or complete the SEP above, the resolution of civil penalty liability in Paragraph 50 will not apply. EPA's determinations of whether Respondent completed the SEP satisfactorily and whether Respondent made good faith and timely efforts to complete the SEP project will bind Respondent.

48. Any public statement that Respondent makes referring to the SEP 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

49. 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.

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

51. 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.

52. 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 50, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.


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

54. 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).

55. The terms of this CAFO bind Respondent, its successors and assigns.
56. 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.
57. Each party agrees to bear its own costs and attorneys fees in this action.
58. This CAFO constitutes the entire agreement between the parties.

Lansing Board of Water & Light, Respondent

9/27/19
Date


Richard Peffley, General Manager
Lansing Board of Water & Light

United States Environmental Protection Agency, Complainant

9-27-19
Date

Sara Brunema
for 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-05-2019-0036

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.

9/27/19
Date

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

Appendix A
Supplemental Environmental Project

1. LBWL proposes to implement a building retrofit and 'renewable ready' project, in coordination with the Lansing School District, at the J.W. Sexton High School, a STEM Early College Magnet school. The LBWL will
 - (i) work with Lansing high school students in the STEM program to assess the building's energy usage,
 - (ii) recommend efficiency improvements and
 - (iii) commission building upgrades consistent with the scope of this project.
2. The improvements will make the building more energy efficient, allowing the district to lower its electric and gas usage and prepare the building for the installation of renewable energy generation such as solar PV in the future.
3. This project will provide educational benefits and opportunity for Lansing school children, while improving the energy efficiency of a three-story, approximately 245,675 square foot school building that is nearly 100 years old. Initial building assessments conservatively estimate a potential energy savings of over 226,000 kWh, which will result in reduced emissions of criteria pollutants and hazardous air pollutants, including mercury.

Consent Agreement and Final Order
In the matter of: Lansing Board of Water & Light – Eckert Station
Docket Number: CAA-05-2019-0036

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number CAA-05-2019-0036, which was filed on 9/30/2019, in the following manner to the following addressees:

Copy by E-mail to Respondent: Richard Peffley
Dick.Peffley@lbwl.com

Respondent: Lansing Board of Water & Light – Eckert Station
601 Island Avenue
Lansing, Michigan 48910

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

Copy by E-mail to
Attorney for Respondent: Paul Collins
Collinsp@millercanfield.com

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

Dated: September 30, 2019



LaDawn Whitehead
Regional Hearing Clerk

U.S. Environmental Protection Agency, Region 5