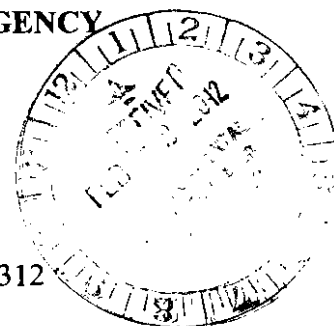


**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**



IN RE: :
: DOCKET NO. CAA-03-2011-0312
Sunbury Generation L.P. :
Shamokin Dam, PA :
: **PROCEEDING UNDER:**
Respondent. :
: Section 113(a), (d) of the Clean Air Act,
: 42 U.S.C. § 7413(a), (d).
:
:

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Complainant, the Director of the Air Protection Division, U.S. Environmental Protection Agency, Region III (“EPA” or “the Agency”), and by Sunbury Generation L.P. (“Sunbury Generation” or the “Respondent”), pursuant to Section 113(a) and (d) of the Clean Air Act (“CAA” of the “Act”), as amended, 42 U.S.C. §7413(a), (d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”) found at 40 C.F.R. Part 22, with specific reference to the Consolidated Rules at 40 C.F.R. § 22.18(b)(2) and (3). This Consent Agreement and the accompanying Final Order (collectively referred to herein as the “CAFO”) address alleged violations by Respondent of Sections 110 and 502 of the Act and certain provisions of the Pennsylvania State Implementation Plan (“Pa. SIP”) limiting the opacity emissions of certain sources, as set forth in this CAFO and the Complaint filed in this matter on September 29, 2011.

II. GENERAL PROVISIONS

2. The EPA and Respondent agree to amend, via this CAFO, the complaint filed by EPA on September 29, 2011. By this CAFO, EPA and Respondent agree to add to the allegations of the September 29, 2011 complaint the alleged violations set forth specifically in paragraph 22 below.
3. For the purpose of this proceeding only, Respondent admits the jurisdictional allegations set forth in the complaint and this CAFO.
4. The EPA and Respondent expressly acknowledge that the provisions of Paragraph 3 shall not constitute an admission as to any matter other than as necessary for establishing EPA's jurisdiction in this proceeding, and is neither intended nor shall be construed as an admission that may be relied upon for any purpose by any person not a party to this proceeding.
5. Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this Consent Agreement, except as provided in Paragraph 3, above.
6. Respondent agrees not to contest EPA's jurisdiction with respect to the execution and enforcement of this Consent Agreement or the issuance of the accompanying Final Order.
7. For the purpose of this proceeding only, Respondent hereby expressly waives its right to a hearing on any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.

8. Respondent consents to the issuance of the CAFO and agrees to comply with the terms of the CAFO.
9. Respondent shall bear its' own costs and attorneys' fees.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

10. Under Section 110(a)(1) of the Act, 42 U.S.C. §7410(a)(1), states are responsible for adopting and submitting to EPA for approval a state implementation plan ("SIP") which provides for the implementation, maintenance, and enforcement of each National Ambient Air Quality Standard ("NAAQS") within that state. Pennsylvania's EPA-approved SIP is set forth at 40 C.F.R Part 52, Subpart NN.
11. Complainant has determined that Respondent has violated certain provisions of the federally-enforceable Pennsylvania SIP, as well as certain provisions of its CAA Title V permit, thereby violating Sections 110 and 502 of the Act. In accordance with the Consolidated Rules, 40 C.F.R. Part 22, with specific reference to the Consolidated Rules set forth at 40 C.F.R. § 22.18(b)(2) and (3), Complainant alleges the following findings of fact and conclusions of law.
12. Sunbury Generation owns and operates an electricity generating facility located in Shamokin Dam, Pennsylvania. The facility is comprised of six coal-fired boilers which produce steam to generate electricity. Boilers 1a and 1b comprise Unit 1. Boilers 2a and 2b comprise Unit 2. Boiler 3 comprises Unit 3 and Boiler 4 comprises Unit 4. Each "Unit" has a separate stack and continuous opacity monitor ("COM").

13. Sunbury Generation is a “major stationary source,” as that term is defined in Section 302 of the CAA, 42 U.S.C. §7602. Section 502 of the CAA requires that major sources obtain a Title V operating permit. 42 U.S.C. § 7661a. Pennsylvania has an approved Title V operating permit program, which requires that “Title V facilities” have permits containing all applicable requirements. 25 Pa. Code § 127.502. Sunbury Generation is a “Title V facility” as that term is defined in 25 Pa. Code § 121.1.
14. Sunbury Generation’s Title V permit (Operating permit #55-00001) was issued on November 17, 2000, revised on June 19, 2003, and had an expiration date of November 16, 2005. Sunbury Generation submitted an application to the Pennsylvania Department of Environmental Protection (“PADEP”) for renewal of this permit, and at all times relevant to this NOV, Sunbury Generation was operating under the terms of the November 17, 2000 Title V operating permit. Boiler Units 1, 2 and 3 are designated as emissions sources 031 (1a), 032 (1b), 033 (2a), 034 (2b), and 035 (Unit 3) in the November 17, 2000 Title V permit. Boiler Unit 4 is designated as emission source 036 in the Title V permit.
15. 25 Pa. Code § 123.41, which pertains to visible emissions from any source, is part of the federally –approved Pennsylvania SIP. *See* 40 C.F.R. § 52.2020(c).
16. 25 Pa. Code § 123.41 provides that “No person may permit the emission into the outdoor atmosphere of visible air contaminants in such a manner that the opacity of the emission is either of the following:
 - Equal to or greater than 20% for a period or periods aggregating more than three minutes in any 1 hour.
 - Equal to or greater than 60% at any time.”

17. Emission restriction #004 in Sunbury Generation's Title V permit (p. 19, Section C), contains the same language restricting visible emissions as in 25 Pa. Code § 123.41.
18. On June 22, 2010, EPA conducted a CAA inspection of the Sunbury Generation facility.
19. During the June 22, 2010 inspection, Sunbury Generation provided EPA with a copy of its Continuous Source Monitoring System ("CSMS") Report for the first Quarter of 2010. In every calendar quarter, Sunbury Generation submits its continuous opacity monitoring ("COM") and Continuous Emissions Monitoring System ("CEMS") data to PADEP. This data is used by PADEP to create a CSMS Report summarizing SO_x, NO_x, and opacity data for each of the four Units at Sunbury Generation.
20. The first quarter 2010 CSMS Report for Sunbury Generation summarizes the number of days and minutes for which the COMS and CEMS reports that each Unit is out of compliance with the applicable opacity, NO_x, and/or SO_x standards. The CSMS Report also identifies each individual date on which the CEMS or COMS does not demonstrate compliance for the Unit with the applicable emission standard.
21. The first quarter 2010 CSMS Report for Sunbury Generation shows that Units 1, 2 and 3 had a significant number of minutes in exceedance of the 20% and/or 60% opacity standard. A summary of these exceedances is listed below in Table 1.

Table 1 – Minutes Over the Opacity Standard During the First Quarter of 2010

<u>Unit</u>	<u>Minutes over the 20% opacity standard in the first quarter of CY10¹</u>	<u>Minutes over the 60% opacity standard in the 1st quarter of CY10</u>
1	105	6
2	10	2
3	95	22

22. On December 1, 2010, EPA issued a Finding of Violation/Notice of Violation (“NOV”) to Sunbury Generation, alleging certain violations of the particulate emission standards found in the Pennsylvania SIP and Sunbury Generation’s Title V permit during 2009. Specifically, the NOV alleged three violations, which were: 1) that Sunbury Generation’s sources 031 and 032 violated 25 Pa. Code § 123.11(a)(2) and Emission Restriction #001 in its Title V Operating Permit on February 24, 2009; 2) that Sunbury Generation’s source 035 violated 25 Pa. Code § 123.11(a)(3) and Emission Restriction #001 for source 035 in the Title V Operating Permit on February 25, 2009; and 3) that Sunbury Generation’s source 036 (Unit 4) violated 25 Pa. Code § 123.11(a)(3) and Emission restriction #001 for source 036 in the Title V Operating Permit on February 26, 2009. Sunbury Generation requested a conference with EPA to discuss these alleged violations.

23. On January 10, 2011, EPA met with representatives of Sunbury Generation and its counsel to discuss the violations alleged in the December 2010 NOV. During the conference, EPA also raised the issue of the opacity violations identified in the CSMS Report for the first Quarter of 2010. At that meeting and during the inspection, Sunbury Generation informed EPA that the first Quarter CSMS Report was the only CSMS Report that PADEP had issued to Sunbury Generation under the current ownership.

¹ These minutes are in addition to the allowed overage of 3 minutes/hr.

24. Following the January 2011 NOV conference, EPA requested and received from PADEP the following CSMS Reports for Sunbury Generation:

- A CSMS Report for each of the four quarters in 2007;
- A CSMS Report for the second and fourth quarter of 2008;
- A CSMS Report for the first and third quarter of 2009.

CSMS Reports were not available for other quarters.

25. The 2010 CSMS report for the first quarter (January through March) indicates that all four Units had periods in exceedance of both the 20% and 60% opacity standards. The CSMS Report calculates a penalty of \$7,696 for the exceedances at Units 1, 2 and 3, but no penalty was assessed for these violations by PADEP. EPA understands that a penalty for opacity violations at Unit 4 during the first quarter of 2010 will be assessed by PADEP.

26. On the basis of the CSMS Report for the first quarter of 2010, the Director of EPA Region III's Air Protection Division issued a Notice of Violation ("NOV"), dated June 29, 2011, under Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1). The June 2011 NOV alleged that Units 1 through 3 at the Sunbury Generation facility violated the opacity limitations in 25 Pa. Code § 123.41, as well as Emission Restriction #004 for Sources 031, 032, 033, 034 and 035 in Title V Operating Permit #55-00001 issued by the PADEP (as such permit was revised on June 19, 2003), at numerous times during the first quarter of 2010. A copy of the June 2011 NOV was submitted to the PADEP.

27. The Director of EPA Region III's Air Protection Division issued to Sunbury Generation an Administrative Complaint and Notice of Opportunity for Hearing (the "Complaint"), dated September 29, 2011, alleging certain violations of the CAA and Pa SIP based on the opacity allegations identified in the June 2011 NOV and paragraph 26 of this Consent Agreement.
28. EPA has alleged, through the December 2010 NOV and this CAFO, that Respondent violated the particulate emission limits in 25 Pa. Code § 123.11(a) and Emission Restriction #001 from the Title V operating permit for sources 031, 032, 035 and 036, on the dates and in the manner set forth in detail in paragraph 22 above.
29. EPA alleges that Respondent violated the opacity limitations in 25 Pa. Code § 123.41 and Emission Restriction #004 set forth in Respondent's Title V permit, at Units 1, 2 and 3 during the first quarter of 2010, as described in Table 1 in paragraph 21, above.

IV. SETTLEMENT TERMS

30. In full and final settlement and resolution of all allegations referenced in the December 2010 NOV, the June 2011 NOV, the Complaint (as amended by this CAFO), and the allegations referenced in the foregoing Findings of Fact and Conclusions of Law, and in full satisfaction of all civil penalty claims pursuant thereto, Respondent agrees to pay a civil penalty in the amount of \$5,800 (five thousand eight hundred dollars) according to the terms and in the manner described in paragraphs 31 through 39 below. This settlement amount is based upon Complainant's consideration of a number of factors, including, but not limited to, the penalty assessment criteria set forth in Section 113(e) of the Act, 42 U.S.C. § 7413(e), which include the size of the business, the economic impact

of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation, payment of previous penalties for the same violations, the seriousness of the violations and the economic benefit of noncompliance, as well as the Clean Air Act Stationary Source Civil Penalty Policy

31. Payment of the civil penalty of \$5,800 shall be made by Respondent in accordance with this CAFO no later than thirty (30) days after the effective date of this CAFO.
32. Such civil penalty amount shall become due and payable in accordance with this CAFO upon Respondent's receipt of a copy of this CAFO signed by the Regional Judicial Officer or her designee. In order to avoid the assessment of additional interest, administrative costs, and late payment penalties in connection with such civil penalty as described in this CAFO, Respondent must pay the civil penalty within 30 days of the effective date of the CAFO. Payment of the civil penalty amount shall be made by either cashier's check, certified check, or electronic transfer. All checks shall be made payable to "Treasurer, United States of America" and shall be remitted using one of the following methods:

- a. Via regular U.S. Postal Service Mail to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P. O. Box 979077
St. Louis, MO 63197-9000
Contact: Eric Volck (513) 487-2105

- b. Via commercial Overnight Delivery to the following address:

U.S. Bank
Government Lockbox 979077
U.S. Environmental Protection Agency

Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2GI
St. Louis, MO 63101
Contact: (314) 418-1028

- c. Respondent's civil penalty payment also may be made by electronic funds transfer ("EFT") to the following account:

Federal Reserve Bank of New York
ABA = 021030004
Account No. 68010727
SWIFT Address: FRNYUS33
33 Liberty Street
New York, NY 10045
Field tag 4200 of Fedwire message should read "D 68010727
Environmental Protection Agency"

- d. Respondent's civil penalty payment may also be made by automated clearinghouse (ACH), also known as Remittance Express (REX), to the following account:

U.S. Treasury REX/Cashlink ACH Receiver
ABA – 051036706
Account 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
5700 Rivertech Court
Riverdale, MD 20737
866-234-5681

33. All payments made by check shall also reference the above case caption and docket number, CAA-03-2011-0312. At the same time that any payment is made, copies of any corresponding check, or written notification confirming any electronic wire transfer, shall be mailed to Lydia A. Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and to Jerome Curtin, Air Protection Division (3AP12), U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

34. Respondent's failure to make timely payment of the civil penalty provided herein or to comply with the conditions in the CAFO may result in referral of this matter to the United States Attorney for enforcement of the CAFO in the appropriate United States District Court. Additionally, Respondent's failure to make timely payment of the civil penalty provided herein or to comply with the conditions in the CAFO may result in the assessment of additional interest, penalties and/or late payment penalty charges, as described below.
35. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
36. Interest on the civil penalty assessment in this CAFO will begin to accrue on the date that a copy of this executed CAFO is mailed or hand-delivered to respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United State Treasury tax and loan rate in accordance with 40 C.F.R. § 1311(a).
37. The cost of EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's Resources Management Directives – Cash Management, Chapter 9,

EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.

38. A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent for more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
39. Respondent agrees not to deduct for civil taxation purposes the civil penalty paid pursuant to this CAFO.

V. RESERVATION OF RIGHTS

40. This Consent Agreement and the accompanying Final Order resolve only those violations alleged in the December 2010 NOV and the Complaint (as amended by this CAFO and including the June 2011 NOV), and the allegations referenced in the foregoing Findings of Fact and Conclusions of Law, and are subject to all limits on the scope of resolution and reservation of rights set forth in 40 C.F.R. § 22.18(c). Nothing in this Consent Agreement or the accompanying Final Order shall be construed to limit the authority of the EPA and/or the United States to undertake action against any person, including Respondent, in response to any condition which EPA or the United States determines may present an imminent and substantial endangerment to the public health, welfare or the environment, nor shall anything in this Consent Agreement or the accompanying Final Order be construed to resolve any claims for criminal sanctions now pending or that

may be sought in the future, and the United States reserves its authority to pursue criminal sanctions.

41. Furthermore, EPA reserves any rights and remedies available to it under the CAA, the regulations promulgated thereunder, and any other federal laws or regulations of which Complainant has jurisdiction, to enforce the provisions of this CAFO, the CAA and its implementing provisions, and of any other federal laws or regulations for which it has jurisdiction, following entry of this CAFO.

VI. PARTIES BOUND


42. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA and upon Respondent and the employees, contractors, successors and assigns of Respondent. By his or her signature below, the person signing this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized to enter into this Consent Agreement and to bind legally the Respondent to the terms and conditions of this Consent Agreement and accompanying Final Order.

VII. EFFECTIVE DATE

43. The effective date of this Consent Agreement and the accompanying Final Order is the date on which the Final Order, having been signed by the Regional Administrator of U.S. EPA Region III or his designee, is filed with the Regional Hearing Clerk of U.S. EPA Region III.

For the Respondent:

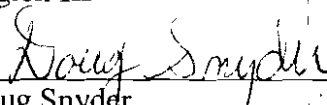
Date: 1/24/12



David Meehan
President
Sunbury Generation L.P.

For the Complainant:

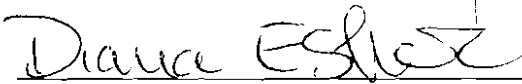
Date: 1/31/12

United States Environmental Protection Agency
Region III


Doug Snyder
Assistant Regional Counsel

The Air Protection Division, United States Environmental Protection Agency, Region III, recommends that the Regional Administrator of U.S. EPA Region III or his designee issue the accompanying Final Order.

Date: 2/1/2012



Diana Esher, Director
Air Protection Division

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

**Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

IN RE:

Sunbury Generation L.P.
Shamokin Dam, PA

Respondent

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DOCKET NO. CAA-03-2011-0312

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PROCEEDING UNDER:

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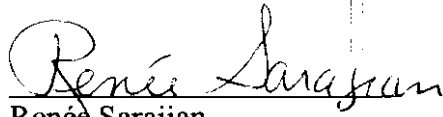
FINAL ORDER

The Preliminary Statement, Findings of Fact and Conclusions of Law, and all other sections and terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if set forth at length.

NOW THEREFORE, pursuant to Section 113 of the Clean Air Act ("CAA"), as amended, 42 U.S.C. § 7413, and 40 C.F.R. Part 22, Respondent Sunbury Generation L.P. is hereby ordered to pay a civil penalty in the amount of \$5,800 dollars, as set forth in the Consent Agreement.

The effective date of the accompanying Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk of U.S. EPA Region III, following signature by the Regional Judicial Officer.

Date: 2/11/12


Renée Sarajian
Regional Judicial Officer

CERTIFICATE OF SERVICE

IN RE:

Sunbury Generation, LLC
Shamokin Dam, PA, 17876

Respondent.

DOCKET NO. CAA-03-2011-0312

PROCEEDING UNDER:

Section 113(a), (d) of the Clean Air Act,
42 U.S.C. § 7413(a), (d).

The undersigned hereby certifies that the original of the Consent Agreement and Final Order ("CAFO") in this matter was filed with the Regional Hearing Clerk, EPA Region III, on February 2, 2012, and that true and correct copies were sent, via Certified Mail, Return Receipt Requested, to the persons listed below on the date signed below:

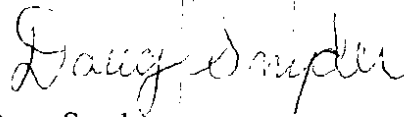
Bart E. Cassidy, Esq.
Manko, Gold, Katcher, Fox LLP
401 City Avenue, Suite 500
Bala Cynwyd, PA 19004

And

Jeffrey Specht
Plant Manager
Sunbury Generation, LLC
Old Susquehanna Trail
Shamokin Dam, PA 17876

Date:

2/2/2012



Doug Snyder
Assistant Regional Counsel