

II. APPLICABLE STATUTES AND REGULATIONS

3. Section 110 of the CAA, 42 U.S.C. § 7410, requires that each State adopt and submit to EPA for approval a plan providing for implementation, maintenance, and enforcement of each National Ambient Air Quality Standard (“NAAQS”) in the State, and that such plan be adopted as law by the State following reasonable notice and public hearings. See CAA § 110(a). If EPA finds the State Plan complete, EPA shall approve the State Implementation Plan (“SIP”). See CAA § 110(k). Pennsylvania’s EPA-approved SIP is set forth at 40 C.F.R. Part 52, Subpart NN.

4. 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. Pennsylvania’s Title V permitting program is found at 25 Pa. Code §§ 127.501 – 127.543.

5. Section 113(a) of the CAA, 42 U.S.C. § 7413(a), authorizes EPA to issue an administrative penalty order under Section 113(d) upon a finding that any person has violated the requirements of a SIP (§ 113(a)(1)) and/or violated any provision of a permit promulgated under Title V of the Act (§ 113(a)(3)).

III. GENERAL ALLEGATIONS

6. EPA issued a Notice of Violation (“NOV”) to Sunbury Generation dated June 29, 2011 alleging certain violations of the Pennsylvania SIP. Those SIP provisions were also contained in Sunbury Generation’s Title V permit.

7. 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”).

8. 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.

9. Sunbury Generation is a “Title V facility” as that term is defined in 25 Pa. Code § 121.1.

10. At all times relevant to this complaint, Sunbury Generation was subject to a Title V permit (Operating permit #55-00001) issued on November 17, 2000. Boiler Units 1, 2 and 3 are designated as emissions sources 031, 032, 033, 034, and 035 in the November

- 17, 2000 Title V permit. Boiler Unit 4 is designated as emission source 036 in the Title V permit. Source 031 corresponds to Boiler 1a, source 032 corresponds to Boiler 1b, source 033 corresponds to Boiler 2a, source 034 corresponds to Boiler 2b, and source 035 corresponds to Boiler 3/Unit 3.
11. 25 Pa. Code § 123.41, which pertains to visible emissions from any source, is part of the federally-approved Pa. SIP. *See* 67 Fed. Reg. 39854 (June 11, 2002), 40 C.F.R. § 52.2020(c).
12. 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.”
13. 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.
14. On June 22, 2010, EPA conducted a CAA inspection of the Sunbury Generation facility.
15. 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 SOx, NOx, and opacity data for each of the four Units at Sunbury Generation.

16. The first quarter 2010 CSMS Report for Sunbury Generation summarizes the number of days and minutes each Unit is out of compliance with the applicable opacity, NOx, and/or SOx standards. The CSMS Report also identifies each individual date when compliance was not achieved.

IV. VIOLATIONS

VIOLATION OF SIP OPACITY STANDARD AT UNITS 1, 2 AND 3

17. As shown by the first quarter 2010 CSMS Report, Units 1, 2 and 3 at Sunbury Generation had a significant number of minutes in exceedance of the 20% and/or 60% opacity standard set forth in 25 Pa. Code § 123.41. The total minutes of exceedance at each Unit 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

18. The violations of the opacity standard in 25 Pa. Code § 123.41 shown in Table 1 above are violations of the federally-enforceable Pa SIP, enforceable under Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1).

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

VIOLATIONS OF TITLE V PERMIT CONDITIONS AT UNITS 1, 2 AND 3

19. Emission Restriction #004 in Sunbury Generations Title V permit (p. 19, Section C) incorporates the opacity limits set forth in 25 Pa. Code § 123.41 for Units 1, 2, and 3.
20. As shown by the CSMS Report for the first quarter of 2010, Units 1, 2, and 3 violated the opacity standard in Emission Restriction #004 of Sunbury Generation's Title V permit for the periods of time shown in Table 1 above.
21. These violations of the Title V permit are violations of Section 502 of the Act, 42 U.S.C. § 7661a, enforceable under Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3).
22. On the basis of the CSMS Report for the first quarter of 2010, the Director of EPA Region III's Air Protection Division issued another Notice of Violation, dated June 29, 2011, under Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1). The NOV alleged that Units 1 through 3 at Sunbury 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 Sunbury's Title V Operating Permit # 55-00001. A copy of this NOV was submitted to the PADEP.

V. PROPOSED CIVIL PENALTY

23. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Parts 19

and 27, authorize a penalty of not more than \$37,500 for each day of violation of the CAA that occurred after January 12, 2009. EPA proposes to assess a civil penalty of nine thousand nine hundred dollars (\$9,900) against Respondent as follows:

Economic Benefit \$0

Actual or possible harm

Amount of pollutant \$2500

Toxicity \$0

Sensitivity of Env. \$0

Length of time \$0

Importance to regulatory scheme

Improper operation

Control equipment \$2500

Size of Violator \$2000

Subtotal \$ 7000

Inflation Adjustment = $7000 \times 1.4163 = \$9914$

Adjustment Factors none applied at this time

Total after adjustment \$9914 (rounded down to \$9,900)

24. The proposed civil penalty has been determined in accordance with Section 113 of the CAA, 42 U.S.C. § 7413, 40 C.F.R. Part 19, U.S. EPA's Clean Air Act Stationary Source Civil Penalty Policy, dated October 25, 1992 (CAA Penalty Policy), and Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Rule (pursuant to the Debt Collection Improvement Act of 1996, Effective October 1, 2004), dated

September 21, 2004 (Inflation Policy). Copies of the CAA Penalty Policy, and the Inflation Policy are enclosed with this Complaint. The proposed penalty is not a demand as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412.

25. In determining the amount of any penalty to be assessed, Section 113(e) of the CAA, 42 U.S.C. § 7413(e), requires EPA to take into consideration 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 as established by any credible evidence, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation. To develop the proposed penalty herein, Complainant has taken into account the particular facts and circumstances of this case with specific reference to the CAA Penalty Policy, which was indexed for inflation in keeping with 40 C.F.R. Part 19.

26. EPA will consider, among other factors, Respondent's ability to pay to adjust the proposed civil penalty assessed in this Complaint. The proposed penalty reflects a presumption of Respondent's ability to pay the penalty and to continue in business based on the size of their businesses and the economic impact of the proposed penalty on their businesses. The burden of raising and demonstrating an inability to pay rests with Respondent. In addition, to the extent that facts or circumstances unknown to Complainant at the time of the issuance of the Complaint become known after issuance of the Complaint, such facts and circumstances may also be considered as a basis for adjusting the proposed civil penalty assessed in the Complaint.

27. EPA's applicable penalty policy represents an analysis of the statutory penalty factors enumerated above, as well as guidance on their application to particular cases. If the penalty proposed herein is contested through the hearing process described below, Complainant is prepared to support the statutory basis for the elements of the penalty policy applied in this case as well as the amount and nature of the penalty proposed.
28. No further adjustment of the penalty appears warranted under the applicable penalty policies at this time. If appropriate, further penalty adjustments may be made during settlement negotiations. EPA reserves the right to seek higher penalties if new evidence supports such assessment.

VI. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

29. Respondent has the right to request a hearing to contest any matter of law or material fact set forth in the Complaint or the appropriateness of the proposed penalty. To request a hearing, Respondent must file a written Answer to this Complaint with the Regional Hearing Clerk, U.S. EPA Region III (3RC00), 1650 Arch Street, Philadelphia, PA 19103-2029 within thirty (30) days of receipt of this Complaint. The Answer should clearly and directly admit, deny or explain each of the factual allegations contained in this Complaint of which Respondent has any knowledge. If Respondent has no knowledge of a particular factual allegation, the Answer should so state. That statement will be deemed a denial of the allegation. The Answer should contain: (1) the circumstances or arguments which are alleged to constitute the grounds of any defense; (2) the facts which

Respondent disputes; (3) the basis for opposing any proposed relief; and (4) whether a hearing is requested. Failure of Respondent to admit, deny or explain a material factual allegation in the Complaint constitutes an admission of the allegation. A copy of the Answer and all other documents filed with the Regional Hearing Clerk related to this Complaint must be sent to Doug Snyder (3RC10), Assistant Regional Counsel, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA, 19103-2029.

30. A hearing may be held upon the issues raised by the complaint and the answer if requested by Respondent in its answer. Failure to Answer within 30 days may result in the filing of a Motion for Default Order imposing the penalties proposed herein without further proceedings.

31. Any hearing requested will be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. § 554, and the Consolidated Rules at 40 C.F.R. Part 22. A copy of these rules is enclosed. Hearings will be held in a location to be determined at a later date pursuant to 40 C.F.R. § 22.21(d).

VII. SETTLEMENT CONFERENCE

32. EPA encourages settlement of proceedings at any time after issuance of a Complaint if such settlement is consistent with the provisions and objectives of the CAA. Whether or not a hearing is requested, Respondent may confer with Complainant regarding the allegations of the Complaint and the amount of the proposed civil penalty.

33. In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator or his designee. Settlement conferences shall not affect the requirement to file a timely Answer to the Complaint.
34. The attorney assigned to this case is Doug Snyder, Assistant Regional Counsel. If you have any questions or desire to arrange an informal settlement conference, please contact Mr. Snyder at (215) 814-2692 before the expiration of the thirty (30) day period following your receipt of this Complaint. If you are represented by legal counsel, you must have your counsel contact Mr. Snyder on your behalf. Please be advised that the Consolidated Rules at 40 C.F.R. § 22.8 prohibit any unilateral discussion of the merits of a case with the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator or the Regional Judicial Officer after the issuance of a Complaint.

VIII. QUICK RESOLUTION

35. In accordance with 40 C.F.R. § 22.18(a) of the Consolidated Rules, Respondent may resolve this proceeding at any time by paying the specific penalty proposed in this Complaint or in Complainant's prehearing exchange. If Respondent pays the specific penalty proposed in this Complaint within 30 days of receiving this Complaint, then, pursuant to 40 C.F.R. § 22.18(a)(1) of the Consolidated Rules, no Answer need be filed.
36. If Respondent wishes to resolve this proceeding by paying the penalty proposed in this Complaint instead of filing an Answer but needs additional time to pay the penalty,

pursuant to 40 C.F.R. § 22.18(a)(2) of the Consolidated Rules, Respondent may file a written statement with the Regional Hearing Clerk within 30 days after receiving this Complaint stating that Respondent agrees to pay the proposed penalty in accordance with 40 C.F.R. § 22.18(a)(1). Such written statement need not contain any response to, or admission of, the allegations in the Complaint. Such statement shall be filed with the Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and a copy shall be provided to Doug Snyder (3RC10), Assistant Regional Counsel, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029. Within 60 days of receiving the Complaint, Respondent shall pay the full amount of the proposed penalty. Failure to make such payment within 60 days of receipt of the Complaint may subject Respondent to default pursuant to 40 C.F.R. § 22.17 of the Consolidated Rules.

37. Upon receipt of payment in full, in accordance with 40 C.F.R. § 22.18(a)(3) of the Consolidated Rules, the Regional Judicial Officer or Regional Administrator shall issue a final order. Payment by Respondent shall constitute a waiver of Respondent's right to contest the allegations and to appeal the final order.

38. Payment of the penalty shall be made by cashier's check, certified check, electronic wire transfer, Automated Clearing House ("ACH"), or an on line, internet payment as specified below. All payments also shall reference the above case caption and docket number.

All checks shall be made payable to Treasurer, United States of America and shall be mailed to the attention of:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P. O. Box 979077
St. Louis, MO 63197-9000.

Overnight deliveries shall be sent to:

U.S. Bank
Government Lockbox 979077
U.S. Environmental Protection Agency
Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
(314) 418-1028

All electronic wire transfer payments shall be directed to:

Federal Reserve Bank of New York
ABA : 021030004
Account: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental
Protection Agency"

Payments through ACH (also known as REX or remittance express) shall be directed to:

U.S. Treasury REX/ Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - checking

In addition, there is now an on line, internet payment option, available through the United States Department of Treasury. This payment option can be accessed from www.pay.gov. Enter sfo 1.1 in the search field. Open form and complete required fields.

39. At the same time that any payment is made, copies of any corresponding check or written notification confirming any electronic transfer through wire transfer, ACH, or

internet payment 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 Doug Snyder (3RC10), Assistant Regional Counsel, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

9/29/11
Date

Christopher B. Pillafor
Diana Esher, Director
Air Protection Division