

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

In the Matter of:)	Docket No. CWA-05-2025-0001
)	
DTE Electric Company – Monroe Power Plant)	Proceeding to Assess a Class II Civil Penalty under Section 309(g) of the Clean
3500 East Front Street)	Water Act, 33 U.S.C. § 1319(g)
Monroe, Michigan)	
)	
<u>Respondent.</u>)	

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 309(g) of the Clean Water Act (“CWA” or “the Act”), 33 U.S.C. § 1319(g), and Sections 22.13(b) and 22.18(b)(2)-(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. §§ 22.13(b) and 22.18(b)(2)-(3).

2. The Complainant is, by lawful delegation, the Director of the Enforcement and Compliance Assurance Division, EPA Region 5, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is DTE Electric Company (DTE), a corporation in Monroe, 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). *See* 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 terms of this CAFO, including the assessment of the civil penalty specified below.

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 any right to contest the allegations and its right to appeal the proposed final order accompanying the consent agreement.

Statutory and Regulatory Background

9. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into navigable waters except in compliance with, *inter alia*, a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

10. Section 402 of the CWA, 33 U.S.C. § 1342, establishes the NPDES program under which EPA and, upon receiving authorization from EPA, a state may permit discharges into navigable waters, subject to specific conditions. A violation of a NPDES permit is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

11. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, the State of Michigan requested approval from EPA to administer its own permit program for discharges into navigable waters within Michigan and such approval was granted by EPA on October 17, 1973, 39 Fed. Reg. 26,061 (July 16, 1974). Therefore, pursuant to the State's permit program, the Michigan Department of Environment, Great Lakes, and Energy ("EGLE") has issued EGLE NPDES permits.

12. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes the Administrator to assess a Class II civil penalty under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), after consultation with the State in which the violation occurs, when the Administrator finds, on the basis of any information available, that a person has violated Section 301 of the CWA, 33 U.S.C. § 1311, which prohibits unpermitted discharges of any pollutant to navigable waters and discharges of any pollutant to navigable waters not in compliance with a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342, or when the Administrator finds that a person has violated a condition or limitation of a permit issued under 33 U.S.C. § 1342.

Factual Allegations

13. Respondent is a corporation, and therefore a “person” under Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

14. At all times relevant to this Order, Respondent owned and operated the Monroe Power Plant, a coal-fired power plant, located in Monroe, Michigan (Facility).

15. Lake Erie is a “navigable water” under Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

Count 1: Unlawful Discharge of Pollutants into Lake Erie

16. The statements in paragraphs 1 through 15 are hereby incorporated by reference as if set forth in full.

17. At all times relevant to this Order, Monitoring Point 001A and Monitoring Point 001H discharged iron and thermal energy through Outfall 001 into Lake Erie.

18. Respondent was issued NPDES Permit No. MI0001848 (“Permit”) under Section 402 of the CWA, 33 U.S.C. § 1342, by Michigan EGLE. The Permit includes

numerical limits for the daily maximum allowable concentration of iron and thermal energy to be discharged from Monitoring Point 001A and Monitoring Point 001H through Outfall 001 into Lake Erie, as listed in Attachment A.

19. The iron and thermal energy discharged into Lake Erie are “pollutants” as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

20. Respondent used pipes at Monitoring Point 001A and Monitoring Point 001H to convey the iron and thermal energy to the pipe outlet at Outfall 001, where iron and thermal energy were discharged into Lake Erie.

21. Pipes are discernible, confined, and discrete conveyances, which constitute “point sources” as defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

22. Respondent’s addition of iron within March 2022, from the pipes at Monitoring Point 001H through Outfall 001 into Lake Erie constitutes a “discharge of a pollutant” as defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

23. Respondent’s addition of thermal energy within December 2022 and January 2023 from the pipes at Monitoring Point 001A through Outfall 001 into Lake Erie constitutes a “discharge of a pollutant” as defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

24. Because Respondent owns and operates the Facility with pipes and outfalls that act as point sources for the discharge of pollutants to navigable waters, Respondent and the Facility have been subject to the CWA and the NPDES program at all times relevant to this Order. Thus, any such discharge has been and is subject to the CWA and its implementing regulations and the specific terms and conditions prescribed in the Permit.

25. On three occasions between March 1, 2022, and January 31, 2023, inclusive, Respondent submitted Discharge Monitoring Reports (DMRs) to EGLE showing that Respondent discharged iron and thermal energy from Monitoring Point 001A and Monitoring Point 001H through Outfall 001 into Lake Erie in excess of the Permit's daily maximum concentration limits, as listed in Attachment A.

26. Therefore, Respondent is a person who discharged pollutants from a point source into navigable waters, in violation of its Permit, in violation of Section 301 of the CWA, 33 U.S.C. § 1311.

27. Each day the pollutant remains in the navigable waters and/or each day the pollutant is discharged to the navigable waters constitutes a continuing violation of the CWA and an additional day in violation of Section 301 of the CWA, 33 U.S.C. § 1311.

Count 2: Unmonitored Discharge through Monitoring Point 001B

28. The EPA conducted a CWA Compliance Evaluation Inspection at the Facility on August 29 and August 30, 2023 (Inspection).

29. Part I.A.2 of the Permit describes final effluent limitations for Monitoring Point 001B for Total Suspended Solids and Oil and Grease. The Permit states:

During the period beginning on the effective date of this permit and lasting until the expiration date of this permit, the permittee is authorized to discharge an unspecified amount of storm water impacted by residual process wastewater within an inactive coal combustion residual basin from Monitoring Point 001B through Monitoring Point 001A and Outfall 001. Outfall 001 discharges to Lake Erie. Such discharge shall be limited and monitored by the permittee as specified below.

30. During the Inspection, the EPA reviewed DMRs prepared by DTE for the months of April, May, and June 2023. Monitoring results from Monitoring Point 001B were not provided on these three DMRs.

31. During the Inspection, the EPA observed leaks in the containment wall between the Inactive Bottom Ash Basin and the Discharge Channel, and photo documented that the Inactive Bottom Ash Basin was leaking through the containment wall to the Discharge Channel at several locations upstream and downstream of Monitoring Point 001B. These leaks through the containment wall are from the Inactive Bottom Ash Basin to the Discharge Channel, which then flows through Monitoring Point 001B.

32. Part I.A.2.a of the Permit states:
Samples, measurements, and observations taken in compliance with the monitoring requirements above shall be taken at Monitoring Point 001B prior to discharge through Monitoring Point 001A.

33. These leaks through the containment wall which flow through Monitoring Point 001B are discharges that have gone unmonitored by the Respondent, in violation of Part I.A.2.a of the Permit.

34. Therefore, Respondent is a person who discharged pollutants from a point source into navigable waters, in violation of the Permit, in violation of Section 301 of the CWA, 33 U.S.C. § 1311.

Count 3: Preventative Maintenance and Good Housekeeping

35. Section I.B.6 of the Permit states that “Where applicable, structural controls shall, at a minimum, be utilized to achieve the following: a. prevent unauthorized discharges from industrial waste and recyclable material containers....”

36. Chemical totes and hoppers with liquid contents were observed during the Inspection to be stored outside exposed to the elements without structural cover or containment.

37. The conditions described in Paragraph 36 constitute a violation of the narrative requirements of the Permit. Therefore, Respondent is in violation of Section 301 of the CWA, 33 U.S.C. § 1311.

Count 4: Effluent Sampling

38. Part II.B.2. of the Permit provides that “Test procedures for the analysis of pollutants shall conform to regulations promulgated pursuant to Section 304(h) of the Clean Water Act (40 CFR Part 136 – Guidelines Establishing Test Procedures for the Analysis of Pollutants), unless otherwise specified in this permit.”

39. Part I.A.6 of the Permit establishes oil and grease effluent limits and monitoring requirements for discharges through Monitoring Point 001H.

40. During the Inspection, the EPA observed a Facility representative collecting water samples for oil and grease analysis from Monitoring Point 001H on August 29, 2023. The Facility representative used a plastic container at the end of a pole to collect the samples and then walked the sample to the truck where the sample was transferred into glass bottles for laboratory analysis.

41. 40 C.F.R. Part 136.3 requires the use of EPA Method 1664 for the collection of oil and grease.

42. EPA Method 1664 requires oil and grease samples to be collected in a glass container because oil and grease can stick to the inside of a plastic container.

43. Respondent did not collect the water samples for oil and grease analysis using an approved EPA Method, in violation of 40 C.F.R. Part 136 and the Permit. Therefore, Respondent is in violation of Section 301 of the CWA, 33 U.S.C. § 1311.

Civil Penalty

44. Under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, the Administrator may assess a Class II civil penalty up to \$25,847 per day of violation up to a total of \$323,081, for violations of the CWA that occurred after November 2,

2015 and for which penalties are assessed on or after January 12, 2022, or other amounts as penalty levels may be later adjusted at 40 C.F.R. Part 19.

45. Based upon the facts alleged in this CAFO, and upon the nature, circumstances, extent and gravity of the violations alleged, as well as Respondent's ability to pay, prior history of such violations, degree of culpability, economic benefit or savings (if any) resulting from the violations, and such other matters as justice may require, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$40,489.65.

46. Respondent agrees to pay a civil penalty in the amount of \$40,489.65 ("Assessed Penalty") within thirty (30) days after the date the Final Order ratifying this consent agreement becomes final. The Final Order shall become final thirty (30) days after the date the Final Order ratifying this agreement is filed with the Regional Hearing Clerk ("Filing Date").

47. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. Additional instructions for making payments are available at: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

48. When making a payment, Respondent shall:

- a. Identify every payment with Respondent's name and the docket number of this Agreement, CWA-05-2025-0001. Any checks shall be made payable to "Treasurer, United States of America".
- b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following persons:

Juliane Grange
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5
R5HearingClerk@epa.gov

Jake Berger
Water Enforcement & Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
berger.jake@epa.gov

Kevin Chow
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
chow.kevin@epa.gov

and

U.S. Environmental Protection Agency
Cincinnati Finance Center
via electronic mail to:
CINWD_AcctsReceivable@epa.gov

“Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number of Respondent’s name.

49. Interest, Charges, and Penalties on Late Payments. Pursuant to 33 U.S.C. § 1321(b)(6)(H), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay any portion of the Assessed Penalty per this Agreement, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately due and owing, and EPA is authorized to recover the following amounts:

- a. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until the unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. Interest will be assessed at prevailing rates, per 33 U.S.C. § 1321(b)(6)(H). The rate of interest is the IRS standard underpayment rate.
- b. Handling Charges. The United States’ enforcement expenses including, but not limited to, attorneys’ fees and costs of collection proceedings.

- c. Late Payment Penalty. A twenty percent (20%) quarterly non-payment penalty.

50. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following:

- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 131.13 and 13.14.
- b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.
- c. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.
- d. Request that the Attorney General bring a civil action in the appropriate district court to recover the full remaining balance of the Assessed Penalty, in addition to interest and the amounts described above, per 33 U.S.C. § 1321(b)(6)(H). In any such action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

51. Allocations of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

52. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

53. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service ("IRS") annually, a completed IRS Form 1098-F ("Fines,

Penalties, and Other Amounts”) with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor’s violation of any law or the investigation or inquiry into the payor’s potential violation of any law, including amounts paid for “restitution or remediation of property” or to come “into compliance with a law.” EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number (“TIN”), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

- a. Respondent shall complete an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent’s correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
- c. Respondent shall email its completed Form W-9 to EPA’s Cincinnati Finance Center at wise.milton.epa.gov, within 30 days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and
- d. In the event that Respondent has certified in its completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN, Respondent shall provide EPA’s Cincinnati Finance Center with Respondent’s TIN, via email, within five (5) days of Respondent’s receipt of a TIN issued by the IRS.

General Provisions

54. The parties consent to service of this CAFO by email at the following valid email addresses: chow.kevin@epa.gov (for Complainant) and breanne.reitzel@dteenergy.com (for

Respondent). Respondent understands that the CAFO will become publicly available upon proposal for public comment and upon filing.

55. Full payment of the penalty as described in Paragraphs 45 and 46 and full compliance with this CAFO shall not in any case affect the right of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

56. As provided under 40 C.F.R. § 22.18(c), full payment of the penalty as described in Paragraphs 45 and 46 and full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for the particular violations alleged in this CAFO.

57. This CAFO does not affect Respondent's responsibility to comply with the CWA and other applicable laws, regulations, or permits.

58. Respondent certifies that it is complying with Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a), 1342.

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

60. Each person signing this CAFO certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to the terms of this CAFO.

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

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

63. Pursuant to 40 C.F.R. § 22.18(b)(3), this Consent Agreement does not dispose of this proceeding without execution of the Final Order. The Final Order will not be issued until after completion of the requirements of Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4),

and 40 C.F.R. § 22.45(b), which require, among other things, public notice and a reasonable opportunity to comment on any proposed penalty order. Further, under Section 309(g), 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.45, this Consent Agreement may be withdrawn before execution of the Final Order. Please refer to Section 309(g) of the CWA, 33 U.S.C. 1319(g), 40 C.F.R. § 22.45, and 40 C.F.R. Part 22 (the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties) for detailed information on the procedures regarding Consent Agreement and Final Order as a penalty order under the CWA and settlement under Part 22.

64. When final and effective, this CAFO is a “final order” for purposes of 40 C.F.R. §§ 22.13, 22.18, 22.31, 22.45 and the EPA’s Interim Clean Water Act Settlement Penalty Policy (Mar. 1995).

65. In accordance with Section 309(g)(5) of the CWA, 33 U.S.C. § 1319(g)(5), and 40 C.F.R. § 22.45, this CAFO shall become effective 30 days after the date of issuance unless, if applicable, a commenter files a petition for judicial review pursuant to 33 U.S.C. § 1319(g)(8) or a request for hearing pursuant to 33 U.S.C. § 1319(g)(4)(C), or, if applicable, 30 days after the request or petition is denied. The date of issuance is the date the Final Order is signed by the Regional Judicial Officer or Regional Administrator.

ATTACHMENT A

Alleged Exceedances of NPDES Permit No. MI0001848 Final Effluent Limitations

Monitoring Period Date	Outfall	Parameter	Limit Type	DMR Value	DMR Value Unit	Limit Value	Limit Value Unit	% Exceedance
3/31/2022	001-B	Iron, total (as Fe)	Daily Max.	4.56	mg/L	1	mg/L	356
12/31/2022	001-A	Thermal discharge million BTUs per hr.	Daily Max.	17850	MBTU/hr	15500	MBTU/hr	15
1/31/2023	001-A	Thermal discharge million BTUs per hr.	Daily Max.	18649	MBTU/hr	15500	MBTU/hr	20

In the Matter of:
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DTE Electric Company – Monroe Power Plant, Respondent

Daniel Casey
Plant Manager
DTE Electric Company – Monroe Power Plant

Date

United States Environmental Protection Agency, Complainant

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division
U.S. EPA Region 5

Date

In the Matter of:
DTE Electric Company – Monroe Power Plant
Docket No. CWA-05-2025-0001

Final Order

In accordance with Section 309(g)(5) of the CWA, 33 U.S.C. § 1319(g)(5), and 40 C.F.R. § 22.45, this CAFO shall become effective 30 days after the date of issuance unless, if applicable, a commenter files a petition for judicial review pursuant to 33 U.S.C. § 1319(g)(8) or a request for hearing pursuant to 33 U.S.C. § 1319(g)(4)(C), or, if applicable, 30 days after the request or petition is denied. The date of issuance is the date the undersigned signed this Final Order. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18, 22.31, and 22.45. IT IS SO ORDERED.

By: _____ Date: _____
Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5