



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

APR 28 2005

REPLY TO THE ATTENTION OF
(AE-17J)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jeffery Bees
President and CEO
Youngstown Thermal, L.L.C.
236 North Champion Street
Youngstown, Ohio 44503

Dear Mr. Bees:

Enclosed is a file stamped Consent Agreement and Final Order (CAFO) which resolves the Matter of: Youngstown Thermal L.L.C. Youngstown, Ohio. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on APR 28 2005.

Pursuant to paragraph 8 of the CAFO, Youngstown Thermal must pay the civil penalty within 30 days of APR 28 2005. Your check must display the case docket number, CAA-05-2004-0043, and the billing document number, 050305020.

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

Sincerely yours,

A handwritten signature in cursive script that reads "William L. MacDowell".

William MacDowell, Chief
Air Enforcement and Compliance Assurance Section (MN/OH)

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:) Docket No. CAA-05-2004-0043
)
Youngstown Thermal L.L.C.)
Youngstown, Ohio,)
Respondent.)
42 U.S.C. § 7413(d)

Consent Agreement and Final Order

1. Complainant, the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5 (U.S. EPA), brought this administrative action seeking a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).

2. On September 27, 2004, U.S. EPA filed the complaint in this action against Respondent Youngstown Thermal L.L.C. (Youngstown Thermal). The complaint alleges that Youngstown Thermal violated Section 110 of the Act, 42 U.S.C. § 7410, Section 502(a) of the Act, 42 U.S.C. § 7661(a), Ohio Administrative Code (OAC) 3745-17-10(C), and the Title V Permit issued to its facility on February 18, 1999 at its facility in Youngstown, Ohio.

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REGION 5

Stipulations

3. Youngstown Thermal admits the jurisdictional allegations in the complaint and neither admits nor denies the factual allegations in the complaint.

4. Youngstown Thermal waives its right to contest the allegations in the complaint, and waives its right to appeal under Section 113(d) of the Act, 42 U.S.C. § 7413(d). Nothing herein should be deemed an admission of fact or law by the Respondent in any other proceeding not involving enforcement of this Order.

5. Youngstown Thermal affirms, based on information and belief formed after reasonable inquiry, that it is complying fully with OAC 3745-17-10(C).

6. The parties consent to the terms of this consent agreement and final order (CAFO).

7. The parties agree that settling this action without further litigation, upon the terms in this CAFO, is in the public interest.

Civil Penalty

8. In consideration of Respondent's ability to pay and Respondent's agreement to perform a supplemental environmental project, U.S. EPA agrees to mitigate the proposed penalty of \$25,000 to \$1,000.

9. Youngstown Thermal must pay the \$1,000 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," within 30 days after the effective date of this CAFO.

10. Youngstown Thermal must send the check to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

11. A transmittal letter, stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check. Respondent must send copies of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (R-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

Susan Prout, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3509

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

13. If Youngstown Thermal does not pay timely the civil penalty, or any stipulated penalties due under paragraph 26, below, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

14. Interest will accrue on any overdue amount from the date payment was due at a rate established under 31 U.S.C. § 3717. Youngstown Thermal will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. Youngstown Thermal will pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). 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.

Supplemental Environmental Project

15. Youngstown Thermal must complete a supplemental environmental project (SEP) designed to protect the environment and public health by upgrading the sidestream baghouse on Boiler #4 as set forth in Paragraph 16, below. This project is estimated to reduce emissions of particulate matter (PM) by 24%

on Boiler #4 which would cause a maximum emission reduction of 15.0 tons per year. [NOTE: Nothing in the SEP shall be construed to require Youngstown Thermal to achieve any additional emission limit or emission reduction requirement than those in the Ohio SIP and Youngstown Thermal's Title V permit.]

16. At its Youngstown, Ohio facility, Youngstown Thermal must complete the SEP as follows:

- a. By June 30, 2005, Youngstown Thermal shall complete the installation of polyimide fabric bags on baghouse #4.
- b. The bags shall be designed to have a collection efficiency of 99.9%.
- c. The bags shall be designed to have an air-to-cloth ratio of 6/1. This improvement will be designed to allow 50% of the total flue gas generated by the boiler to pass through the sidestream baghouse.

17. Youngstown Thermal must spend at least \$25,000 to purchase and install the equipment.

18. Youngstown Thermal must operate and maintain the baghouse improvements for the duration of the useful life of the baghouse, unless equivalent controls are installed as approved by Ohio EPA under applicable law.

19. Youngstown Thermal certifies that it is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. Youngstown Thermal further certifies that it has not

received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

20. U.S. EPA may inspect the facility at any time to monitor Youngstown Thermal's compliance with this CAFO's SEP requirements.

21. Youngstown Thermal must submit a SEP completion report to U.S. EPA by July 31, 2005. This report must contain 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 costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services;
- d. certification that Youngstown Thermal has completed the SEP in compliance with this CAFO; and
- e. description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

22. Youngstown Thermal must submit all notices and reports required by this CAFO by first class mail to:

Attn: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

23. In each report that Youngstown Thermal 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, the information 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.

24. Following receipt of the SEP completion report described in paragraph 21 above, U.S. EPA must notify Youngstown Thermal 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 U.S. EPA will give Youngstown Thermal 30 days or such other period agreed to by U.S. EPA to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and U.S. EPA will seek stipulated penalties under paragraph 26.

25. If U.S. EPA takes action under option b. or c. above, Youngstown Thermal may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of Youngstown Thermal's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Youngstown Thermal a written decision on its objection. If Youngstown Thermal does not complete the SEP as

required by U.S. EPA's decision, Youngstown Thermal will pay stipulated penalties to the United States under paragraph 26 below.

26. If Youngstown Thermal fails to complete the SEP as required by this CAFO, Youngstown Thermal must pay stipulated penalties to the United States as follows:

a. Except as provided in subparagraph b, below, if Youngstown Thermal did not complete the SEP satisfactorily according to this CAFO, Youngstown Thermal must pay a stipulated penalty of \$25,000.

b. If Youngstown Thermal did not complete the SEP satisfactorily, but U.S. EPA determines that Youngstown Thermal: (i) made good faith and timely efforts to complete the SEP; and (ii) certified, with supporting documents, that it spent at least 90 percent of the required amount on the SEP, Youngstown Thermal will not be liable for any stipulated penalty.

c. If Youngstown Thermal satisfactorily completed the SEP, but spent less than 90 percent of the required amount on the SEP, Youngstown Thermal must pay a stipulated penalty of \$3,000.

d. If Youngstown Thermal failed to submit timely the SEP completion report required by paragraph 21 above, Youngstown Thermal must pay a stipulated penalty of \$500 for each day after the report was due until it submits the report.

27. U.S. EPA's determinations of whether Youngstown Thermal satisfactorily completed the SEP and whether it made good faith, timely efforts to complete the SEP will be considered final Agency action for purposes of enforcement of this Order.

28. Youngstown Thermal must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the

penalties. Youngstown Thermal will use the method of payment specified in paragraphs 9 and 10 above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

29. Any public statement that Youngstown Thermal makes referring to the SEP must include the following language, "Youngstown Thermal undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Youngstown Thermal for violations of the Clean Air Act."

30. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

a. Youngstown Thermal must notify U.S. EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Youngstown Thermal past and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. Youngstown Thermal must take all reasonable actions to avoid or minimize any delay. If Youngstown Thermal fails to notify U.S. EPA according to this paragraph, Youngstown Thermal will not receive an extension of time to complete the SEP.

b. If the parties agree that circumstances beyond the control of Youngstown Thermal caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.

c. If U.S. EPA does not agree that circumstances beyond the control of Youngstown Thermal caused or may cause a delay in completing the SEP, U.S. EPA will notify Youngstown Thermal in writing of its decision and any delays in completing the SEP will not be excused.

d. Youngstown Thermal has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

General Provisions

31. This CAFO settles U.S. EPA's claims for civil penalties for the violations alleged in the complaint.

32. Nothing in this CAFO restricts U.S. EPA's authority to seek Youngstown Thermal's compliance with the Act and other applicable laws and regulations.

33. This CAFO does not affect Youngstown Thermal's responsibility to comply with the Act and other applicable federal, state and local laws, and regulations.

34. This CAFO constitutes an "enforcement response" as that term is used in "U.S. EPA's Clean Air Act Stationary Source Civil Penalty Policy" to determine Youngstown Thermal's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

35. The terms of this CAFO bind Youngstown Thermal, and its successors, and assigns.

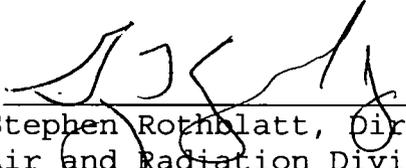
36. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.

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

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

**U.S. Environmental Protection
Agency, Complainant**

Date: 4/22/05

By:  - ALTMG
Stephen Rothblatt, Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5 (A-18J)

Youngstown Thermal, L.L.C., Respondent

Date: 4/14/05

By: 
Jeffrey Bees, President and CEO
By: Youngstown Thermal, LLC
By: Thermal Ventures II, LP, Its
Member
By: Yorktown Thermal, GP, Inc. Its
General Partner

CONSENT AGREEMENT AND FINAL ORDER
Youngstown Thermal, L.L.C.
Docket No. CAA-05-2004-0043

Final Order

The foregoing Consent Agreement is hereby ratified and incorporated by reference into this Final Order pursuant to 40 CFR § 22.18(b)(3). The Respondent is hereby assessed a civil penalty of \$1,000 and perform a SEP as provided in the Consent Agreement and ordered to comply with all of the terms of the Consent Agreement, effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Order disposes of this matter pursuant to 40 CFR § 22.18(b). IT IS SO ORDERED.

Date: 4/26/05


for Bharat Mathur
Acting Regional Administrator
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

CERTIFICATE OF SERVICE

I, Loretta Shaffer, certify that I hand delivered the original of the Consent Agreement and Final Order, docket number CAA-05-2004-0043 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to Youngstown Thermal and Youngstown Thermal's Counsel by placing them in the custody of the United States Postal Service addressed as follows:

on the 28th day of April, 2005.

US ENVIRONMENTAL PROTECTION AGENCY REGION 5
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Loretta Shaffer
AECAS (MN/OH)

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