

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)
)
Dominion Cleveland Thermal,) **Administrative Consent Order**
L.L.C., Dominion Cleveland)
Thermal, Inc., and Dominion) **EPA-5-01-113(a) OH-01**
Energy, Inc., a wholly owned)
subsidiary of Dominion)
Resources, Inc.)
)
Proceeding Under)
Section 113(a)(1)(A))
of the Clean Air Act,)
42 U.S.C. § 7413(a)(1)(A))

Administrative Consent Order

1. The Director of the Air and Radiation Division, United States Environmental Protection Agency ("U.S. EPA"), Region 5, is issuing this Order to Dominion Cleveland Thermal, Inc., Dominion Cleveland Thermal, Inc., and Dominion Energy, Inc., a wholly owned subsidiary of Dominion Resources, Inc. (collectively "Respondents"), under Section 113(a)(1)(A) of the Clean Air Act ("the Act"), 42 U.S.C. § 7413(a)(1)(A).

Statutory and Regulatory Background

2. Section 110 of the Act, 42 U.S.C. § 7410, requires each State to submit to the Administrator of U.S. EPA a plan for attaining and maintaining the National Ambient Air Quality Standards promulgated pursuant to Section 109 of the Act, 42 U.S.C. § 7409.

3. On April 15, 1974, U.S. EPA approved Ohio Administrative Code ("OAC") Rule AP-3-11 as part of the State Implementation Plan ("SIP") for the State of Ohio. See 39 Fed. Reg. 13542. The federally approved Ohio SIP is an implementation plan within the meaning of Section 110 of the Act, 42 U.S.C. § 7410. On May 27, 1994, U.S. EPA approved OAC Rule 3745-17-10, which superseded Rule AP-3-11. 59 Fed. Reg. 13542. OAC Rule 3745-17-10 limits the particulate matter that a source can discharge into the atmosphere.

4. Section 113(a)(1)(A) of the Act, 42 U.S.C. § 7413(a)(1)(A) authorizes the Administrator of U.S. EPA to issue an order requiring compliance to any person who has violated or is violating a SIP. The Administrator has delegated this authority to the Director of the Air and Radiation Division.

Findings

5. Cleveland Energy Resources ("CER") has owned and operated a district heating system which includes the Canal Road Steam Plant at 2274 Canal Road in Cleveland, Cuyahoga County, Ohio ("the facility"). The facility consists of, among other things, the number 34 chain grate boiler (B001), the number 35 chain grate boiler (B002), the number 36 chain grate boiler (B003), and the number 37 chain grate boiler (B004).

6. CER was, and boilers B001, B002, B003, and B004 are, subject to the requirements of the Ohio SIP, including OAC Rule 3745-17-10. Boiler B003 is currently inoperative. On September 30, 1994, October 21, 1994, and April 7, 1995, the Ohio Environmental Protection Agency ("OEPA") issued CER a permit to operate boiler B001, boiler B002 and boiler B004, respectively, (collectively "the permits").

7. The permits include the particulate limits required by OAC Rule 3745-17-10, and mandate that the facility perform annual testing to ensure compliance with the permits, and require the facility to submit to OEPA quarterly reports regarding coal quality, opacity exceedances as measured by the facility's opacity monitors and opacity monitor outages to OEPA.

8. On June 17, 1996, CER submitted a permit application under Title V of the Act to the State of Ohio.

9. On February 12, 1998, U.S. EPA issued to CER a Notice of Violation ("NOV"), alleging violations of the Ohio SIP particulate limit of 0.10 lb./MMBtu set forth at OAC Rule 3745-17-10 for each of CER's three existing boilers at its Canal Road Steam plant. Concurrent with the NOV, U.S. EPA also issued a Section 114 Request for Information ("Request") instructing CER to perform stack testing on each of the three boilers. However, CER contended that by the time CER had received the Request for testing, the weather in Cleveland was too warm for it to operate its boilers at the prescribed maximum load.

10. On March 16, 1998, CER and U.S. EPA held a conference pursuant to CER's request following its receipt of the February 12, 1998 NOV.

11. In an attempt to address the emission limit violations at CER, and the outstanding request for testing, on July 22, 1998, U.S. EPA and CER met to discuss entering into an agreed administrative order that would require CER *inter alia* to conduct a series of performance tests on the three boilers using "worst case coal." However, the parties could not reach an agreement.

12. Accordingly, on October 9, 1998, U.S. EPA issued to CER a unilateral administrative order, number EPA-5-OH-98-16 pursuant to Sections 113 and 114 of the CAA, alleging that CER violated OAC Rule 3745-17-10 by failing to comply with the particulate emission limits specified in OAC Rule 3745-17-10, and ordering CER to conduct a series of stack tests to verify compliance. The order specified that CER burn "worst case coal" during the stack tests.

13. CER subsequently represented to U.S. EPA that its "worst case coal" contained between 8-12 percent ash, and no more than 13,600 BTU/lb. as measured dry during the testing, and approximately 19% fines less than 1/4 inch in size.

14. Between November 5, 1998, and April 20, 1999, CER conducted six stack tests to test particulate emissions; two on each boiler. According to data submitted with the test results, the ash content of the coal used during the testing averaged 5.86%, with a BTU content of 14,234 per pound as measured dry, and 12.6% fines.

15. U.S. EPA determined that the coal used by CER during the testing significantly departed from the specified "worst case coal" test conditions. Thus, on March 31, 2000, U.S. EPA issued a findings of violation ("FOV") to CER alleging that it had violated administrative order number EPA-5-OH-98-16 through its failure to use worst case coal as specified in the order.

16. On July 6, 2000, representatives of CER and U.S. EPA met to discuss the March 31, 2000, findings of violation.

17. On November 3, 2000, U.S. EPA issued to CER a Request for Information under Section 114 of the Act, 42 U.S.C. § 7414, specifying that the coal used in the annual performance test, required by the facility's permit, contain an ash content of no less than 8%. CER never performed the tests required by the Section 114 request.

18. On November 30, 2000, U.S. EPA met with representatives of Dominion Energy, Inc ("Dominion Energy") to discuss the 114 Request for Information. Dominion Energy represented that it was in the process of purchasing CER and operating it under a new

corporation named Dominion Cleveland Thermal, L.L.C. ("Dominion Cleveland Thermal"). Dominion Cleveland Thermal, L.L.C. was incorporated in the State of Ohio on December 12, 2000, and is owned by Dominion Cleveland Thermal, Inc., which in turn is a wholly owned subsidiary of Dominion Energy.¹ Dominion also represented that upon acquiring legal title and/or commencement of Dominion Energy's operation of the steam generating facility located at 2274 Canal Road in Cleveland, Cuyahoga County, Ohio, CER would transfer the permits to Dominion Cleveland Thermal. Thus, Dominion Cleveland Thermal, through CER, had notice of the FOV issued on March 31, 2000 to CER regarding the facility.

19. Dominion Energy acquired the facility on May 21, 2001.

20. Dominion Cleveland Thermal is responsible for complying with the Ohio SIP. It will also be responsible for maintaining the Title V application.

21. On June 20, 2001, representatives of Dominion Cleveland Thermal and U.S. EPA met to discuss the ash content requirement in the 114 Request for Information.

Compliance Program

22. Upon the effective date of this order the facility will only burn coal with a weekly "as received" average ash content of no greater than 7.25%.

23. Respondents shall formally amend the facility's Title V permit application, in accordance with the laws of the state of Ohio, to include limitations on the ash content of the facility coal equal to the limitations in previous paragraph.

24. Respondents agree that the facility will not operate boiler B003 prior to notifying U.S. EPA.

25. In the event that Respondents intend to restart boiler B003, they shall notify EPA and the State of Ohio as soon as possible, but in no case less than 60 days prior to restart. At that time the boiler will be evaluated for its applicability to New Source Performance Standards and New Source Review. In any event, boiler B003 shall be subject to operating standards no less stringent than the requirement to burn coal with a weekly "as received" average ash content of no greater than 7.25%.

¹Dominion Energy is a wholly owned subsidiary of Dominion Resources, Inc.

26. Until the facility obtains a Title V permit with the limits specified in paragraph 22, the facility shall submit the annual stack test results and the quarterly reports of the coal ash contents and opacity monitor readings and outages as required by CER's current permit to operate to EPA, Region 5.

27. Respondents must send all reports required by this Order to:

Attention: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604.

28. This order suspends the requirements for testing as ordered in U.S. EPA's Request for Information issued November 3, 2000, until further notice.

General Provisions

29. Dominion Cleveland Thermal neither admits nor denies any factual allegations or legal conclusions contained herein.

30. This Order does not affect Respondents' responsibility to comply with other local, state, and federal laws and regulations.

31. This Order does not restrict U.S. EPA's authority to enforce the Ohio SIP, or any section of the Act.

32. Nothing in this Order limits U.S. EPA's authority to seek appropriate relief, including penalties under Section 113 of the Act, 42 U.S.C. § 7413, for CER's violation of the Ohio SIP.

33. Failure to comply with this Order may subject Respondents to penalties of up to \$27,500 per day for each violation under Section 113 of the Act, 42 U.S.C. § 7413.

34. The terms of this Order are binding on Respondents, their assignees and successors. Respondents must give notice of this Order to any successors in interest, prior to transferring ownership, and must simultaneously verify to U.S. EPA, at the above address, that Respondents have given the notice.

35. This Order is not subject to the Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.*, because it seeks collection of information by an agency from specific individuals or entities as part of an administrative action or investigation.

36. U.S. EPA may use any information submitted under this Order in an administrative, civil, or criminal action.

37. Respondents agree to the terms of this Order.

38. This Order is effective on the date of signature by the Director of the Air and Radiation Division. This Order will expire when Dominion submits a formal revision of its Title V permit application as required in paragraph 23, if Dominion Cleveland Thermal has complied with all of its terms.

3-28-02
Date

Tony W. Belcher
Dominion Cleveland Thermal, L.L.C.

3-28-02
Date

Tony W. Belcher
Dominion Cleveland Thermal, Inc.

3/28/02
Date

Lameba F. Paqqert
Dominion Energy, Inc.

6/17/2002
Date

Steve S. Mathur Director
Bharat Mathur, Director
Air and Radiation Division

CERTIFICATE OF FILING AND MAILING

I, Loretta Shaffer, do hereby certify that a Administrative Consent Order was sent by Certified Mail, Return Receipt

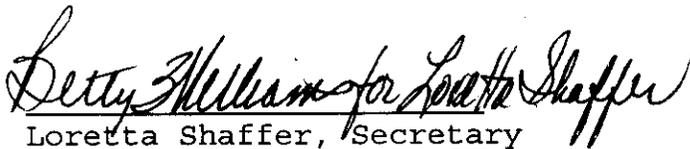
Requested, to:

Herb Zien
Dominion Cleveland Energy
1921 Hamilton Street
Cleveland, Ohio 44114

I also certify that a copy of the Administrative Consent Order was sent by First Class Mail to:

Robert Hodanbosi, Chief
Division of Air Pollution Control
Ohio Environmental Protection Agency
Lazarus Government Center / P.O. Box 1049
Columbus, Ohio 43216-1049

on the 20th Day of June 2002.


Loretta Shaffer, Secretary
AECAS (MN/OH)

CERTIFIED MAIL RECEIPT NUMBER: 70993400 0000 95975634