



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

APR 08 2008

REPLY TO THE ATTENTION OF:

AE-17J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mike McKown, General Counsel
Murray Energy Group
29325 Chagrin Blvd., Suite 300
Pepper Pike, Ohio 44122

Dear Mr. McKown:

Enclosed is a file stamped Consent Agreement and Final Order (CAFO) which resolves American Energy Corporation Century Mine (AEC), in Beallsville, Ohio. CAA Docket No. CAA-05-2008-0014. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on APR 08 2008.

Pursuant to paragraph 51 of the CAFO, AEC, must pay the \$40,000 civil penalty within 30 days of the date the CAFO was filed, APR 08 2008. The check must display the case docket number, CAA-05-2008-0014, and the billing document number, 2750803A014.

Please direct any questions regarding this case to Cathleen Martwick, Associate Regional Counsel, (312) 886-7166.

Sincerely yours,

Brent Marable, Chief
Air Enforcement and Compliance Assurance Section (IL/IN)

Enclosure

cc: Bruce Weinberg, APC Manager
Ohio Environmental Protection Agency

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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)	Docket No. CAA-05-2008-0014
)	Proceeding to Assess a Civil
American Energy Corporation)	Penalty under Section 113(d) of the
Century Mine)	Clean Air Act,
Beallsville, Ohio)	42 U.S.C. § 7413(d)
)	
)	
Respondent.)	

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b) 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. Part 22 (2004).

2. Complainant is the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5 (U.S. EPA).

3. Respondent is American Energy Corporation (AEC), a corporation doing business in Ohio.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a Consent Agreement and Final Order (CAFO). 40 C.F.R. § 22.13(b) (2004).

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 entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. AEC admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. AEC waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c) and its right to appeal this CAFO. For purposes of this proceeding, AEC waives its right to contest any allegations in this CAFO.

Statutory and Regulatory Background

Ohio State Implementation Plan

9. On January 22, 2003, U.S. EPA approved Ohio Administrative Code (OAC) Rule 3745-31 as part of the federally enforceable state implementation plan (SIP) for Ohio. 68 Fed. Reg. 2909.

10. OAC Rule 3745-31 prohibits installation of a new source without first obtaining a Permit-to-Install from the Ohio Environmental Protection Agency (OEPA).

11. On June 7, 2001, OEPA issued a Final Permit-to-Install to AEC, Application Number 06-06463.

12. The Permit-to-Install General Terms and Conditions, on page 2 of 21 at Part I(a)(2)(b), requires that AEC submit deviations reports to the OEPA on a quarterly basis.

13. 40 C.F.R. § 52.23 states that, among other things, failure to comply with any provisions of this part, any approved regulatory provisions of a State implementation plan, any

permit condition or with any permit limitation or condition contained within an operating permit, renders the person or government entity so failing to comply in violation of a requirement and subject to enforcement under Section 113 of the Act.

New Source Performance Standard

14. Under Section 111(e) of the Act, 42 U.S.C. § 7411(e), the Administrator of U.S. EPA promulgated the New Source Performance Standard (NSPS) for Coal Preparation Plants at 40 C.F.R. Part 60, Subpart Y, 40 C.F.R. §§ 60.250 through 60.254.

15. Pursuant to 40 C.F.R. § 60.250, the provisions of Subpart Y apply to affected facilities in coal preparation plants with a production capacity of 200 tons per day or greater that commenced construction after October 24, 1974.

16. "Affected facility" is defined as, with reference to a stationary source, any apparatus to which a standard is applicable. 40 C.F.R. § 60.2.

17. "Stationary source" is defined as any building, structure, facility or installation which emits or may emit any air pollutant. 40 C.F.R. § 60.2.

18. "Coal preparation plant" is defined as any facility which prepares coal by one or more of the following processes: breaking, crushing, screening, wet or dry cleaning, and thermal drying. 40 C.F.R. § 60.251(a).

19. 40 C.F.R § 60.7(a)(1), requires the owner or operator of an affected facility to notify the Administrator in writing that construction of an affected facility has commenced postmarked no later than 30 days after such date.

20. 40 C.F.R § 60.7(a)(3), requires the owner or operator of an affected facility to notify the Administrator in writing of the actual date of initial start-up of the affected facility postmarked no later than 15 days after such date.

21. 40 C.F.R. § 60.252 and 40 C.F.R. § 60.8 require the owner or operator of a coal preparation plant to conduct a performance test to determine compliance with the opacity standard within 180 days of the initial startup and furnish the Administrator with a written report of the results of such performance test.

Enforcement Provisions

22. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for SIP and NSPS violations that occurred from January 31, 1997 through March 15, 2004, and may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004 under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19 (2004).

23. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

24. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations

25. At all times relevant to this Consent Agreement and Final Order (CAFO), AEC was and is the owner and operator of the coal preparation plant at 43521 Mayhugh Hill Road, Township Highway 88 in Beallsville, Ohio.

26. AEC's coal preparation plant in Beallsville, Ohio is an "affected facility" as defined at 40 C.F.R. § 60.2.

27. AEC's coal preparation plant in Beallsville, Ohio is a "stationary source" as defined at 40 C.F.R. § 60.2.

28. AEC prepares coal at its Beallsville, Ohio plant by breaking, crushing, screening, wet or dry cleaning, or thermal drying.

29. AEC commenced construction of its coal preparation plant on or about June 1, 2001.

30. AEC began operating its coal preparation plant on or about July 10, 2002.

31. AEC's coal preparation plant has a production capacity of 200 tons per day.

32. On June 7, 2001, OEPA issued a Final Permit-to-Install to the facility, Application Number 06-06463.

33. AEC's Permit-to-Install states that AEC must comply with the requirements of 40 C.F.R. Part 60, Subpart Y.

34. On March 9, 2006, U.S. EPA issued a Section 114 request letter to AEC requesting, among other things, all correspondence between AEC, OEPA and U.S. EPA.

35. On March 23, 2006, AEC submitted a response to the March 9, 2006, Section 114 request letter.

36. In the March 23, 2006 response, AEC did not provide a copy of its notification that construction of the Beallsville, Ohio coal preparation plant had commenced.

37. In the March 23, 2006 response, AEC did not provide a copy of its notification of the actual date of initial start-up of the Beallsville, Ohio coal preparation.

38. In the March 23, 2006 response, AEC did not provide a copy of its written report of results of its compliance test conducted at its Beallsville, Ohio coal preparation plant.

39. In the March 23, 2006 response, AEC did not provide copies of any deviation reports for its Beallsville, Ohio coal preparation plant.

40. On June 29, 2006, U.S. EPA issued a Notice of Violation/Finding of Violation to AEC for violations of the Act and SIP.

41. On August 30 and 31, 2006, AEC conducted a performance test to determine compliance with the opacity standard and submitted a written report of the results as required by 40 C.F.R. § 60.252.

42. On July 17, 2006, AEC submitted quarterly deviation reports for each calendar quarter since June 7, 2001, as required by AEC's Permit to Install.

Violations

COUNT I

(Permit Violation)

43. AEC's Permit-to-Install General Terms and Conditions, on page 2 of 21 at Part I(a)(2)(b), requires that AEC submit deviations reports to the OEPA on a quarterly basis.

44. AEC has violated the SIP required Permit-to-Install by failing to submit deviation reports to the OEPA on a quarterly basis from June 7, 2001 to July 17, 2006.

COUNT II

(NSPS Violation)

45. 40 C.F.R § 60.7(a)(1), requires the owner or operator of an affected facility to notify the Administrator in writing that construction of an affected facility has commenced postmarked no later than 30 days after such date.

46. AEC violated Section 111(e) of the Act, 42 U.S.C. § 7411(e) and 40 C.F.R. Part 60, Subpart Y and 40 C.F.R. § 60.7(a)(1) by failing to notify the Administrator in writing that construction had commenced postmarked no later than 30 days after such date.

COUNT III
(NSPS Violation)

47. 40 C.F.R § 60.7(a)(3), requires the owner or operator of an affected facility to notify the Administrator in writing of the actual date of initial start-up of the affected facility postmarked no later than 15 days after such date.

48. AEC violated Section 111(e) of the Act, 42 U.S.C. § 7411(e) and 40 C.F.R. Part 60, Subpart Y and 40 C.F.R. § 60.7(a)(3) by failing to notify the Administrator in writing of the actual date of initial start-up postmarked no later than 15 days after such date.

COUNT IV
(NSPS Violation)

49. 40 C.F.R. § 60.252 and 40 C.F.R. § 60.8 require the owner or operator of a coal preparation plant to conduct a performance test to determine compliance with the opacity standard within 180 days of the initial startup and furnish the Administrator with a written report of the results of such performance test.

50. AEC violated Section 111(e) of the Act, 42 U.S.C. § 7411(e), 40 C.F.R. Part 60, Subpart Y and 40 C.F.R. § 60.8 by failing to conduct a performance test no later that 180 days after the initial start-up of the facility to determine compliance with the applicable Subpart Y standard and furnish the Administrator with a written report of the results of such performance test.

Civil Penalty

51. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$40,000.

52. AEC must pay the \$40,000 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.

53. AEC must send the check to:

U.S. EPA, Region 5
P.O. Box 37153
Pittsburg, PA 15251-7531

54. 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, (E-13J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

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 60604-3511

Cathleen Martwick, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

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

56. If AEC does not pay timely the civil penalty, 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.

57. Pursuant to 31 C.F.R. § 901.9, AEC must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established under 31 U.S.C. § 3717. AEC will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. AEC 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.

Final Statement

58. This CAFO resolves only Respondent's liability for federal civil penalties for the violations set forth in this CAFO.

59. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

60. This CAFO does not affect AEC's responsibility to comply with the Act and other applicable federal, state and local laws, and regulations. Except as provided in paragraph 58 above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by Complainant.

61. AEC certifies that it is complying fully with 40 C.F.R. Part 60, Subpart Y and its Permit-to-Install.

62. 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 AEC’s “full compliance history” under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

63. The terms of this CAFO bind AEC, and its successors, and assigns.

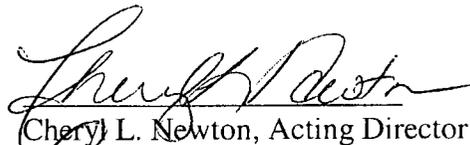
64. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.

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

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

U.S. Environmental Protection Agency, Complainant

4/1/08
Date


Cheryl L. Newton, Acting Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5 (A-18J)

American Energy Corporation Century Mine, Respondent

MARCH 24, 2008
Date

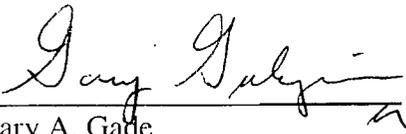

Robert L. Brubaker, Counsel for
American Energy Corporation Century Mine

CONSENT AGREEMENT AND FINAL ORDER
American Energy Corporation, Century Mine
Docket No.

Final Order

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk. This final order disposes of this proceeding pursuant to 40 C.F.R. § 22.18.

4/4/2008
Date



Mary A. Gade
Regional Administrator
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

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OFFICE OF REGIONAL
COUNCIL

In the Matter of American Energy Corp., Beallsville, Ohio
Docket No:

CERTIFICATE OF FILING AND MAILING

I, Betty Williams, do hereby certify that the original of the foregoing Consent Agreement and Final Order (CAFO), was sent to American Energy Corp., was filed with the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604; and that a second original of the CAFO was sent Certified Mail, Return Receipt Requested, to:

Mike McKown, General Counsel
Murray Energy Group
29325 Chagrin Blvd., Suite 300
Pepper Pike, Ohio 44122

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

Bruce Weinberg, APC Manager
Air Pollution Group
2195 Front Street
Logan, Ohio 43138

And to:

Robert L. Brubaker, Esq.
Porter Wright Morris & Arthur
41 South High Street
Columbus, Ohio 43215-6194

on the 8th Day of April 2008


Betty Williams, Secretary
AECAS IL/IN

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