



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

SEP 26 2013

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

REPLY TO THE ATTENTION OF:

Timothy G. Rice,  
Vice President, Assistant General Counsel and Corporate Secretary  
The Dayton Power and Light Company  
1065 Woodman Drive  
Dayton, Ohio 44004

Dear Mr. Rice:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves The Dayton Power and Light Company (DPL), Clean Air Act Docket No CAA-05-2013-0046. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on SEP 26 2013.

Pursuant to paragraph 22 of the CAFO, DP&L must pay the civil penalty within 30 days of SEP 26 2013. Your [cashier's check][certified check] must display the case name The Dayton Power and Light Company, Dayton, Ohio and the docket number, CAA-05-2013-0046.

Please direct any questions regarding this case to Thomas Williams, Attorney at (312) 886-0814.

Sincerely,

Brian H. Dickens  
Chief  
Air Enforcement and Compliance Assurance Branch, MN/OH Section

Enclosure

cc: Ann Coyle, Regional Judicial Officer/C-14J  
Regional Hearing Clerk/E-19J  
Tom Williams/C-14J  
Nicole Wood-Chi/C-14J  
Robert Hodanbosi, OEPA  
John Paul, RAPCA

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	<b>Docket No. CAA-05-2013-0046</b>
	)	
<b>The Dayton Power and Light Company</b>	)	<b>Proceeding to Assess a Civil Penalty</b>
<b>Dayton, Ohio</b>	)	<b>Under Section 113(d) of the Clean Air Act,</b>
	)	<b>42 U.S.C. § 7413(d)</b>
	)	
<b>Respondent.</b>	)	
_____	)	

RECEIVED  
MAY 14 2013  
EPA REGION 5  
COLUMBUS, OHIO

**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 CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (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. Part 22.

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

3. Respondent is The Dayton Power and Light Company (DP&L), a corporation doing business in Ohio. Complainant and Respondent are hereafter referred to jointly as "the Parties."

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).

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 assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

**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 its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and any right to appeal this CAFO.

**Statutory and Regulatory Background**

9. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), and 40 C.F.R. § 70.7(b) provide that, after the effective date of any permit program approved or promulgated under Title V of the CAA, no source subject to Title V may operate except in compliance with a Title V permit.

10. Section 504(a) of the CAA, 42 U.S.C. § 7661c(a), requires that each Title V permit include enforceable emission limitations and standards, a schedule of compliance, and other conditions necessary to assure compliance with applicable requirements, including those contained in a State Implementation Plan (SIP). 42 U.S.C. § 7661c(a).

11. On August 15, 1995, effective October 1, 1995, EPA granted full approval of the Ohio Title V Permit program as a 40 C.F.R. Part 70 permit program. 60 Fed. Reg. 42,045.

12. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for violations that occurred after January 12, 2009 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

13. 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 the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

14. 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 and Alleged Violations**

15. Respondent operates the O.H. Hutchings Station, an electric power generation facility located in Miamisburg, Ohio (the "Facility").

16. The Facility includes six coal-fired electric power generation units ("Units"), individually designated as Unit 1, Unit 2, Unit 3, Unit 4, Unit 5 and Unit 6, respectively. A seventh unit, fired by natural gas with diesel fuel backup capability, is not subject to this CAFO. For purposes of this CAFO, "Unit" means collectively, the coal pulverizer, stationary equipment that feeds coal to the boiler, and the boiler that produces steam for the steam turbine.

17. EPA alleges that for a period beginning in the calendar year of 2003 through the first three months of 2007, Respondent violated the Ohio SIP and the Facility's Title V permit by exceeding its visible particulate matter limits at all six Units at the Facility and, further, that Unit 1 failed its particulate matter emission test in violation of the Ohio SIP and the Facility's Title V permit obligations. EPA provided Respondent and the State of Ohio with actual notice pertaining to Respondent's alleged violations, in accordance with Section 113(a)(1) and (b) of the CAA, 42 U.S.C. § 7413(a)(1) and (b).

18. The Regional Air Pollution Control Agency ("RAPCA") in Dayton, Ohio has issued a separate Administrative Order to Respondent to resolve allegations related to particulate

matter emissions.

19. Respondent does not admit any liability to EPA or RAPCA arising out of the transactions or occurrences alleged by either EPA or RAPCA.

20. The Parties agree and waive any future arguments to the contrary that this CAFO has been negotiated by the Parties in good faith and will avoid litigation between the Parties and that this CAFO is fair, reasonable, and in the public interest.

**Civil Penalty**

21. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case and Respondent's cooperation and agreement to enter, contemporaneously with its entry of this CAFO, an Administrative Consent Order under Section 113(a) of the CAA, Complainant has determined that an appropriate civil penalty to settle this action is \$40,000.

22. Within 30 days after the effective date of this CAFO, Respondent must pay a \$40,000 civil penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

For checks sent by express mail (non-U.S. Postal Service which won't deliver mail to P.O. Boxes), Respondent must send a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines and Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, Missouri 63101

The check must note Respondent's name and the docket number of this CAFO.

23. Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

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

Nicole Wood-Chi (C-14J)  
Thomas Williams (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

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

25. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

26. Respondent 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 by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States' enforcement expenses, including but not limited to attorneys' fees and costs

incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. 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. 42 U.S.C. § 7413(d)(5).

### **Termination**

27. After Respondent has paid the civil penalty required by this CAFO and satisfied the requirements of the Administrative Consent Order it is agreeing to enter contemporaneously with this CAFO, Respondent may serve upon EPA a Request for Termination, stating that Respondent has satisfied those requirements, together with all necessary supporting documentation.

28. Following receipt by EPA of Respondent's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Respondent has satisfactorily complied with the requirements for termination of this CAFO and the Administrative Consent Order. If EPA agrees that the terms of the CAFO and Administrative Consent Order have been fulfilled, the Parties shall execute an agreement stating that the CAFO and Administrative Consent Order are terminated.

### **General Provisions**

29. This CAFO resolves Respondent's liability to EPA and the United States with respect to all claims that were raised with respect to: (a) the facts set forth and the violations alleged in the Notice of Violation issued by the Regional Air Pollution Control Agency dated February 28, 2007; (b) the facts set forth and the violations alleged in the Notice of Violation issued by EPA dated June 29, 2007; and (c) any information provided to EPA between June 29,

2007 and the Effective Date of this CAFO with respect to opacity; ESP operations and performance, maintenance and repair activities, and results of stack tests at the Facility.

30. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any other violation of law.

31. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in Paragraph 29, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

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

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

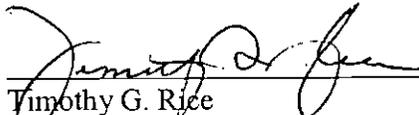
34. Each person signing this consent agreement certifies that he or she has the authority to sign for the Party whom he or she represents and to bind that Party to its terms.

35. Each Party agrees to bear its own costs and attorneys' fees in this action.

36. This CAFO constitutes the entire agreement between the Parties.

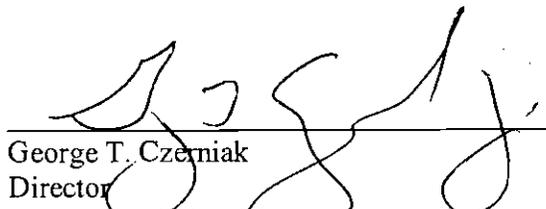
**The Dayton Power and Light Company, Respondent**

September 20, 2013  
Date

  
\_\_\_\_\_  
Timothy G. Rice  
Vice President, Assistant General Counsel and <sup>REV</sup>  
Corporate Secretary 9/26/13  
The Dayton Power and Light Company

**United States Environmental Protection Agency, Complainant**

9/24/13  
Date

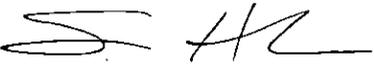
  
\_\_\_\_\_  
George T. Czerniak  
Director  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5

**Consent Agreement and Final Order**  
**In the Matter of: The Dayton Power and Light Company**  
**Docket No. CAA-05-2013-0046**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

9-26-13  
Date

  
\_\_\_\_\_  
Susan Hedman  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 5

**Consent Agreement and Final Order**

**In the Matter of: The Dayton Power and Light Company CAA-05-2013-0046**

**Certificate of Service**

I certify that I filed the original and one copy of the Consent Agreement and Final Order (CAFO), docket number ~~CAA-05-2013-0046~~ with the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604, and that I mailed the second original copy to Respondent by first-class, postage prepaid, certified mail, return receipt requested, by placing it in the custody of the United States Postal Service addressed as follows:

Timothy G. Rice  
Vice President, Assistant General Counsel and Corporate  
Secretary  
The Dayton Power and Light Company  
1065 Woodman Drive  
Dayton, Ohio 44004

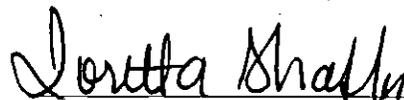
I certify that I delivered a correct copy of the CAFO by intra-office mail, addressed as follows:

Ann Coyle  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
77 W. Jackson Boulevard / Mail Code C-14J  
Chicago, Illinois 60604

I also certify that I mailed a correct copy of the CAFO by first-class mail to:

Robert Hodanbosi, OEPA  
John Paul, RAPCA

On the 26 day of September 2013.

  
Administrative Program Assistant  
AECAB, Planning and  
Administration Section

CERTIFIED MAIL RECEIPT NUMBER:

7009 1680 0000 7669 5756

09 SEP 2013 10:00 AM  
U.S. ENVIRONMENTAL PROTECTION AGENCY  
77 W. JACKSON BOULEVARD  
CHICAGO, ILLINOIS 60604