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

SEP 16 2015

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

The Honorable David T. Handwerk
Mayor of Orrville, Ohio
Orrville Municipal Building
207 North Main Street
Orrville, Ohio 44667

Re: *In the Matter of the City of Orrville*; Docket No. **CAA-05-2015-0057**

Dear Mayor Handwerk:

Enclosed is a file-stamped copy of the fully-executed Consent Agreement and Final Order (CAFO) which resolves the enforcement action, Docket No. **CAA-05-2015-0057**. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on September 16, 2015.

Pursuant to paragraph 57 of the CAFO, the City of Orrville must pay the civil penalty within 30 days of the effective date of the CAFO. Your electronic funds transfer must display the case name and case, Docket No. CAA-05-2015-0057.

Please direct any questions regarding this case to Cynthia Kawakami, Associate Regional Counsel at (312) 886-0564.

Sincerely,

Nathan Frank, Chief
Illinois/Indiana Section
Air Enforcement and Compliance Assurance Branch

Enclosure

cc: Douglas McWilliams, Esq., Squire Patton Boggs
Ann Coyle, Regional Judicial Officer/C-14J
Regional Hearing Clerk/E-19J
Cynthia Kawakami/C-14J
Jim Kavalec/OEPA
Ed Fasko/OEPA/NEDO

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:	)	**Docket No. CAA-05-2015-0057**
City of Orrville **Orrville, Ohio**	)	**Proceeding to Assess a Civil Penalty Under Sections 113(d) and 114(a) of the Clean Air Act, 42 U.S.C. §§ 7413(d) and 7414(a)**
Respondent.	)	

Consent Agreement and Final Order

A. Preliminary Statement

1. This is an administrative action commenced and concluded under Sections 113(d) and 114(a) of the Clean Air Act (the Act), 42 U.S.C. §§7413(d) and 7414(a), 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, United States Environmental Protection Agency, Region 5.

3. The Regional Administrator, has been delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the Act on behalf of EPA. EPA Delegation 7-6 C.

4. Respondent is the City of Orrville ("Orrville"), a municipality in the State of Ohio. Respondent is a "person" as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e)

5. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this consent agreement ("Consent Agreement" or

"Agreement") and the attached final order ("Final Order" or "Order") without adjudication of any issues of law or fact herein.

6. Respondent agrees to comply with the terms of this Consent Agreement and Final Order ("CAFO").

7. Respondent consents to the assessment of the specified civil penalty.

B. Jurisdiction and Waiver of Right to Hearing

8. This Consent Agreement is entered into under Sections 113(d) and 114(a) of the Act, as amended, 42 U.S.C. §§ 7413(d) and 7414(a), and the Consolidated Rules, 40 C.F.R. Part 22.

9. EPA and the United States Department of Justice jointly determined that this matter, although it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty assessment. 42 U.S.C. § 7413(d); 40 C.F.R. § 19.4.

10. In satisfaction of the notice requirements of section 113(a) of the Act, 42 U.S.C. § 7413(a), EPA found that Respondent committed the alleged violations described in Section D of this Agreement and notified Respondent of the alleged violations on March 25, 2015 and notified the State of Ohio of Respondent's alleged violations on March 25, 2015.

11. The issuance of this Consent Agreement and attached Final Order simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b). The Regional Administrator is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent. 40 C.F.R. § 22.18(b)(2).

12. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in the CAFO and denies the violations alleged in Section D.

13. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO, including, but not limited to any right of judicial review under Section 307(b) of the Act, 42 U.S.C. § 7607(b) and Section 702 of the Administrative Procedure Act, 5 U.S.C. § 702, providing for judicial review of final agency action.

C. Statutory and Regulatory Background

14. On June 19, 1978, EPA promulgated the Prevention of Significant Deterioration of Air Quality (the "PSD regulations") pursuant to Subchapter I, Part C of the Act. 43 Fed. Reg. 26388 (June 19, 1978). These regulations were revised on August 7, 1980, Requirements for Preparation, Adoption, and Submittal of Implementation Plans; Approval and Promulgation of Implementation Plans, 45 Fed. Reg. 52676, and December 31, 2002, (Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR), 67 Fed. Reg. 80186, and are codified at 40 C.F.R. § 52.21.

15. 40 C.F.R. § 52.21(i) states, in part, that the PSD regulations, including the need to obtain a PSD permit prior to beginning actual construction, apply to the major modification of any existing major stationary source in an area designated as attainment or unclassifiable.

16. EPA delegated the State of Ohio the authority to issue PSD permits using the federal PSD rules at 40 CFR 52.21 (via delegation letter dated January 29, 1981).

17. On October 10, 2001, EPA conditionally approved Ohio's PSD SIP provisions. 66 *Fed. Reg.* 51570. On February 25, 2010, EPA approved Ohio's NSR Reform SIP provisions. 75 *Fed. Reg.* 8496. The Ohio PSD provisions are codified at Ohio Administrative Code 3745-31-11 to 3745-31-20.

18. Under Section 111 of the Act, 42 U.S.C. § 7411, the Administrator promulgated the New Source Performance Standards (NSPS) General Provisions, at 40 C.F.R. Part 60, Subpart A, and the "Standards of Performance for Small Industrial Commercial-Institutional Steam Generating Units for Which Construction is Commenced After June 19, 1989," codified at 40 C.F.R Part 60, Subpart Dc. Subpart Dc applies to each steam generating unit that has a maximum design heat input capacity of 29 megawatts (MW) (100 million Btu per hour (Btu/hour)) or less, but greater than or equal to 2.9 MW (10 million Btu/hour). 40 C.F.R § 60.40c(a).

19. 40. C.F.R. § 60.14(a) provides that "...any physical or operational change to an existing facility which results in an increase in the emission rate to the atmosphere of any pollutant to which a standard applies shall be considered a modification within the meaning of section 111 of the Act. Upon modification, an existing facility shall become an affected facility for each pollutant to which a standard applies and for which there is an increase in the emission rate to the atmosphere."

20. The Administrator of EPA may assess a civil penalty of up to $27,500 per day violation up to a total of $220,000 for 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, subject to applicable limitations including but not limited to the five-year statute of limitations for civil penalties at 28 U.S.C. § 2462 and other defenses.

21. 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.

22. 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.

D. Factual Allegations

23. Orrville owns and operates a 72 Megawatt electric generating station at 1100 Perry Street, Orrville, Ohio, ("Orrville Generating Station") comprised of three steam turbine generators with rated capacities of 22 MW, 25 MW, and 25 MW, respectively.

24. The Orrville Generating Station is a fossil fuel-fired electric plant consisting of four electric utility steam generation units, with a total capacity of more than 250 million British thermal units per hour heat input, and each having the potential to emit more than 100 tons per year of pollutants regulated under the Act.

25. At all times relevant to this proceeding, Respondent owned and operated units at the Orrville Generating Station that emit regulated pollutants within the meaning of the Act, including sulfur dioxide ("SO_2"), nitrogen oxides ("NO_x") and particulate matter ("PM").

26. In the early fall of 2010, EPA informally notified Orrville of the City's alleged violations of the Act. Alleged violations known to EPA include physical or operational changes that may have triggered Clean Air Act obligations (e.g., PSD, NSR, and New Source Performance Standards (NSPS)) and Title V permitting requirements related to such PSD, NSR and NSPS obligations. Representatives of Orrville and EPA subsequently initiated discussions of the alleged violations and the potential for resolution.

27. Orrville and EPA have reached agreement on an emission reduction plan for Orrville's municipal utility to resolve the violations.

28. On March 25, 2015, to meet statutory requirements for settlement, EPA formally notified Orrville of its violations of the Act, alleging that Orrville violated NSR requirements (that include PSD requirements and 40 C.F.R. § 52.21 as incorporated into the Ohio SIP) for failure to obtain a PSD permit and apply Best Available Control Technology (BACT) prior to commencing construction of major modifications at the Orrville Generating Station.

29. EPA alleges that Orrville violated the NSR, PSD and NSPS and related Title V requirements of the Clean Air Act and 40 C.F.R. § 52.21, as incorporated in the Ohio SIP, when it constructed a major modification at the Orrville Generating Station without first obtaining a PSD permit and applying BACT.

E. Terms of Consent Agreement

30. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

a. consents to the assessment of a civil penalty as stated below;

b. consents to the issuance of any specified compliance or corrective action as specified in this Agreement;

c. consents to the conditions specified in this Agreement; and

d. consents to the Permit Action specified below to facilitate the settlement contained in this Agreement.

31. For the purpose of this proceeding, Respondent:

a. agrees that this Agreement states a claim upon which relief may be granted against Respondent;

b. acknowledges that this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;

c. waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C, § 7607(b)(1);

d. consents to personal jurisdiction in any action to enforce this Agreement or Order, or both, in the United States District Court for the Northern District of Ohio; and

e. waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the Agreement or Order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.

32. Respondent agrees that the time period from the Effective Date of this Agreement until all of the conditions specified in Paragraphs 37 through 61 are completed (the "Tolling Period") shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by Complainant on any claims (the 'Tolled Claims") set forth in Section D of this Agreement. Respondent shall not assert, plead, or raise in any fashion, whether by answer, motion or otherwise, any defense of laches, estoppel, or waiver, or other similar equitable defense based on the running of any statute of limitations or the passage of time during the Tolling Period in any action brought on the Tolled Claims.

I. Definitions

33. CAFO means this CAFO and all Appendices hereto which are incorporated into this CAFO.

34. "Monthly Average Emission Rate" shall be expressed in lb/MMBtu and calculated in accordance with the following procedure: first, sum the total pounds of pollutant emitted from the applicable Unit each calendar month; second, sum the total heat input to the unit in MMBtu during the calendar month; and third, divide the total number of pounds of pollutant emitted during the calendar month by the total MMBtu of heat input during the calendar month. A new Monthly Average Emission Rate shall be calculated for each new calendar month. Each Monthly Average Emission Rate shall include all emissions that occur during all periods within any calendar day on which a Unit fires fossil fuel.

35. Three-Hour Average Emission Rate shall be expressed as lb/MMBtu and shall mean the arithmetic average of the results from three one-hour emission runs.

36. Annual Capacity Factor shall mean the ratio between the actual heat input to a boiler from the fuels burned during a 12-month period and the potential heat input to the boiler had it operated for 8,760 hours during the year at the maximum steady state design heat input capacity on the same fuels that were burned during the previous 12-month period, expressed as a percent.

II. Limitations on Boiler 13

37. By no later than January 31, 2017, Orrville will permanently cease coal firing, remove all coal burners and sever all coal delivery systems from operation for Boiler 13.

38. Prior to operating Boiler 13 after January 31, 2017, Orrville will install new low NO_x, natural gas fired burners and combust only natural gas in Boiler 13.

39. By no later than January 31, 2017, Orrville shall continuously comply with the following emission rates at Boiler 13:

a. SO_2 emissions rate of 0.010 lb/MMBTU, on a Monthly Average Emission Rate basis;

b. PM emissions rate (filterable portion only) of 0.010 lb/MMBTU, on a Three-Hour Average Emission Rate basis (once Boiler 13 is repowered to natural gas).

c. NOx emissions rate of 0.170 lb/MMBTU on a Monthly Average Emission Rate basis (based on the Best Available Technology analysis for a gas burner emission rate that was approved by Ohio EPA on May 22, 2015). In the future, if Respondent is required by a regulatory authority to install a NOx CEMS on Boiler 13, Respondent shall discontinue using the Monthly Average Emission Rate and, instead, use a 30-day rolling average emission rate.

40. By no later than 60 days after the Effective Date, Orrville shall apply to Ohio EPA for a federally enforceable permit to establish appropriate emission limitations for SO_2, PM, and NO_x for Boiler 13. Such limitations shall be at least as stringent as the limits in Paragraph 39 above. Orrville shall include in this submission the BAT analysis approved by Ohio EPA on May 22, 2015, as mentioned in Paragraph 39 above. Nothing in this CAFO shall preclude Ohio EPA from imposing additional limitations or pollution control technologies on Boiler 13.

41. Notwithstanding Paragraphs 37 through 39, Orrville may operate Boiler 13 using coal, past January 31, 2017, under very limited circumstances, provided that it is able to demonstrate in writing (with detailed supporting documentation) to EPA, to the Agency's satisfaction that: 1) the second substation that Orrville designed to provide an alternate point of access to the power grid will not be complete and operational by January 31, 2017, and the

reasons for the delay; 2) the supply of power through the (existing) first substation will be interrupted such that the first substation will be incapable of providing adequate power to meet the projected demands from Orrville's customers during the interim period; 3) Boiler 13 will only be operated using coal when it is absolutely necessary to meet electrical demand within the Orrville community service area; 4) Orrville shall comply with an Annual Capacity Factor limitation on coal combustion of no more than 10 percent after January 31, 2017; and 5) under no circumstances shall Orrville operate Boiler 13 on coal after construction of the second substation has been completed and commenced operation.

42. Within 12 months of startup of Boiler 13 on natural gas and continuing annually thereafter, Orrville shall conduct a stack test on Boiler 13 (unless otherwise required to install and continuously operate a NO_x continuous emissions monitor system), using a test method and procedure specified by and allowed by the applicable Ohio SIP, to determine compliance with the NOx Emissions Rate established under this CAFO. The results of each NOx test shall be submitted to EPA and Ohio EPA within 60 days following completion of such test. Testing frequency shall be reduced to once every two years if the results of two consecutive annual stack test required under this CAFO demonstrate that Boiler 13's NOx emissions are at or below 65% of the NOx Emission Rate established under this CAFO. Nothing in this Agreement precludes the use of these stack tests to satisfy existing testing obligations under Orrville's Title V Permit.

III. Limitations on Boilers 10, 11, and 12

43. By no later than January 31, 2017, for Boiler 10, 11, and 12, Orrville shall either: 1) limit the Annual Capacity Factors of each Boiler to no more than 10.0 percent or; 2) limit the Annual Capacity Factors of each Boiler to no more than 10.0 percent until such time that the Boiler repowers to natural gas and permanently ceases coal firing.

44. Upon entry of this CAFO, Orrville shall continuously comply with a PM emission limit from Boiler 10, 11, and 12 of 0.065 lb/MMBtu, each on a Three-Hour Average Emission Rate basis.

45. Orrville shall conduct a PM stack test on Boilers 10, 11, and 12 to determine compliance with the PM Emission Limits established by this CAFO within 12 months of the initiation of each boiler's operation after the Effective Date of the CAFO. Orrville shall conduct the stack tests using a test method and procedure specified in and allowed by the applicable Ohio SIP. Each test shall consist of three separate runs performed under representative operating conditions. The sampling time for each run shall be at least 60 minutes and the volume of each run shall be at least 0.85 dry standard cubic meters (30 dry standard cubic feet). The results of each PM stack test shall be submitted to EPA and Ohio EPA within 60 days following completion of such test. Nothing in this Agreement precludes the use of these stack tests to satisfy existing testing obligations under Orrville's Title V Permit.

IV. Plant-wide Emission Limitations

46. Commencing in calendar year 2015 and in each calendar year thereafter, Orrville shall not exceed the following plant-wide annual emission limitations:

Year	**Plant-wide NOx Limit (tpy)**	**Plant-wide SO2 Limit (tpy)**
Effective Date through 1/30/2016	2,050	8,000
1/31/16 through 1/30/2017	1,800	8,000
1/31/2017 and beyond	490	1,475

47. If Orrville needs to operate Boiler 13 past the January 31, 2017 deadline and provides the required demonstration to EPA specified in Paragraph 39, Orrville shall be allowed an additional 600 tons per year of SO_2 for the Plant-wide SO_2 Limit specified in Paragraph 47, above. These additional emissions shall be pro-rated for the portion of 2017 that Orrville needs to operate past the January 31, 2017 deadline.

V. Application for Clean Air Act Permits

48. Within 60 calendar-days of the Effective Date of this CAFO, Orrville shall apply to the Ohio Environmental Protection Agency (Ohio EPA) for a permit to install (PTI) under the Ohio SIP at OAC Rule 3745-31 to incorporate the requirements of this CAFO, with the exception of the limitations on Boiler 13.

49. Orrville shall apply to Ohio EPA for a PTI under the Ohio SIP at OAC Rule 3745-31 for the repowering of Boiler 13 to natural gas by no later than January 31, 2016.

50. Within one year from the issuance of each of the PTIs above, Orrville shall apply to Ohio EPA for a modification of its Title V Permit to incorporate the conditions set forth in the PTIs and the conditions provided in this CAFO. Nothing in this CAFO affects Ohio EPA's authority to establish permit requirements more stringent than and/or in addition to those specified herein.

VI. Prohibition on Netting Credits

51. Required emission reductions at the Orrville Generating Station that result from actions to be taken by Orrville to comply with the requirements of this CAFO shall not be considered as creditable contemporaneous emission decreases for the purpose of obtaining a Netting or Offset credit under the Clean Air Act's Nonattainment NSR and PSD programs.

52. Nothing in this CAFO is intended to preclude the emission reductions generated under this CAFO from being considered by the State or EPA as creditable contemporaneous emission decreases for the purpose of attainment demonstrations submitted pursuant to Section 110 of the Act, 42 U.S.C. § 7410, or in determining impacts on National Ambient Air Quality Standards, PSD increment, or air quality related values, including visibility, in a Class I area.

VII. Environmental Mitigation

53. Orrville shall conduct the Environmental Mitigation Project described in Appendix A of this CAFO, consistent with the terms contained in Appendix A.

VIII. Reporting

54. Beginning with the half calendar year period ending December 31, 2015, Orrville must submit to EPA semiannual reports through December 31, 2018 within sixty (60) Days after the end of each half of the calendar year (January through June and July through December). The reports shall include all information necessary to assess compliance with this CAFO.

55. Orrville 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

56. All reports that Respondent must submit to comply with this Agreement shall include the following statement and certification:

> *I certify under penalty of law that the information contained in this submittal to EPA is accurate, true, and complete. I understand that there are significant civil and criminal penalties for making false or misleading statements to the United States government.*

The above statement shall be signed by a responsible official for the Respondent.

F. Civil Penalty

57. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e) and the facts of this case, Complainant has determined that an appropriate civil penalty to settle this action is $25,000.

58. Within 30 days after the Effective Date of this CAFO, Respondent must pay the civil penalty by electronic funds transfer, payable to the "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:
"D68010727 Environmental Protection Agency"

59. In the comment or description field of the electronic funds transfer, state the case name: *In the Matter of City of Orrville*, and the docket number of this CAFO.

60. If Respondent does not pay timely the civil penalty, 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.

61. Pursuant to 31 C.F.R. § 901.9, 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. Respondent must pay a $15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must 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.

G. General Provisions

62. The provisions of this Agreement shall apply to and be binding upon Respondent and its officers, directors, agents, trustees, authorized representatives, successors, and assigns. From the Effective Date of this Agreement until the end of the conversion of Boiler 13 to natural gas and issuance of all CAA permits, Respondent must give written notice and a copy of this Agreement to any successors in interest prior to any transfer of ownership or control of any portion of or interest in the Orrville Generating Station. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to EPA. In the event of any such transfer, assignment, or delegation, Respondent shall not be released from the obligations or liabilities of this Agreement unless EPA has provided written approval of the release of said obligations or liabilities.

63. By signing this Agreement, Respondent acknowledges that this Agreement and Order will be available to the public and agrees that this Agreement does not contain any confidential business information.

64. By signing this Agreement, both parties agree that each party's obligations under this Consent Agreement and attached Final Order constitute sufficient consideration for the other party's obligation. Additionally, both parties agree that Complainant's covenant not to sue Respondent (stated in Paragraph 70) during the time period between the issuance of the attached Final Order and the deadlines for Respondent to complete the non-penalty conditions in

Paragraphs 37 through 56 constitutes sufficient consideration for Respondent's obligations under this Agreement.

65. By signing this Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and is, truthful, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C,§ 1001.

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

67. 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.

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

H. Effect of Consent Agreement and Final Order

69. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Consent Agreement and Final Order resolves only Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.

70. Complainant covenants not to sue Respondent for injunctive or other equitable relief for the violations and facts alleged in this matter, but such covenant terminates if and when Respondent fails to timely and satisfactorily complete every condition stated in Paragraphs 37 through 61. The covenant not to sue becomes permanent upon satisfactory performance of the conditions stated in Paragraphs 37 through 61. If and when this covenant terminates, Complainant may compel Respondent to perform the conditions in Paragraphs 37 through 61,

seek civil penalties that accrue from the Effective Date of this Consent Agreement until compliance is achieved, and seek other relief in a civil judicial action pursuant to the Clean Air Act, pursuant to contract law, or both.

71. Penalties paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

72. This Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.

73. The terms, conditions, and compliance requirements of this Agreement may not be modified or amended except upon the written agreement of both parties, and approval of the Regional Administrator.

74. Any violation of this Order may result in a civil judicial action for an injunction or civil penalties of up to $37,500 per day per violation, or both, as provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), as well as criminal sanctions as provided in Section 113(c) of the Act, 42 U.S.C. § 7413(c). The EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action.

75. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, including but not limited to the National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers, Subpart DDDDD (Industrial Boiler NESHAP). Nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, other than with respect to the matters addressed herein. In accordance with

Orrville Generating Station's State Title V Operating Permit No. P0107692, the boilers at issue in this CAFO are affected sources under the Industrial Boiler NESHAP and not affected sources under the National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-fired Electric Utility Steam Generating Units, Subpart UUUUU.

76. Nothing herein shall be construed to limit the power of EPA.to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

77. EPA reserves the right to revoke this Agreement and settlement penalty if and to the extent that EPA finds, after signing this Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to EPA, and upon revocation of this Agreement, EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. The EPA shall give Respondent written notice of its intent to revoke, which shall not be effective until 30 days after it is received by Respondent.

I. Effective Date

78. Respondent and Complainant agree to issuance of the attached Final Order. Upon filing, EPA will transmit a copy of the filed Consent Agreement to the Respondent. This Consent Agreement and attached Final Order shall become effective after it is fully executed by the Regional Administrator and on the date of filing with the Regional Hearing Clerk (such date, the "Effective Date").

The foregoing Consent Agreement *In the Matter of the City of Orrville*, Docket No. **CAA-05-2015-0057**, is Hereby Stipulated, Agreed, and Approved for Entry. This agreement may be signed in counterparts.

City of Orrville, Respondent

8/12/15
Date

David J. Handwerk
Mayor David T. Handwerk
City of Orrville

United States Environmental Protection Agency, Complainant

9/9/15
Date

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

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:	)	**Docket No. CAA-05-2015-0057**
City of Orrville **Orrville, Ohio**	)	**Proceeding to Assess a Civil Penalty Under Sections 113(d) and 114(a) of the Clean Air Act, 42 U.S.C. §§ 7413(d) and 7414(a)**
Respondent.	)	

Pursuant to 40 C.F.R. § 22.18(b) of the EPA's Consolidated Rules of Practice and Sections 113(d) and 114(a) of the Clean Air Act, 42 U.S.C. §§ 7413(d) and 7414(a), the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified. This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk.

The Respondent is ORDERED to comply with all terms of the Consent Agreement, effective immediately. Failure to comply with the terms of Paragraphs 37 through 61, which are not related to the assessment and payment of civil penalties, will terminate the covenant provided in Paragraph 70.

The Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31.

IT IS SO ORDERED.

14 September 2015
Date

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

APPENDIX A
ENVIRONMENTAL MITIGATION PROJECT
MUNICIPAL STREET LIGHT REPLACEMENT

Orrville agrees to replace existing incandescent municipal street lights (and fixtures) with new energy-efficient light emitting diode (LED) street lights and spend at least $150,000 on this project. Labor costs for the installation of the replacement LED street lights will not be included in the project dollars credited to the mitigation project under this settlement.

Orrville shall comply with the requirements of this Appendix and with Section VII of the Consent Agreement Final Order (CAFO) to ensure that the environmental benefits from the Project described below are achieved.

A. Project: Orrville will replace its existing incandescent municipal street lights and fixtures with new energy-efficient LED street light fixtures.

B. Completion Date: The Project above shall be completed within twenty-four (24) months from the filing date of this CAFO. This project shall be deemed complete upon EPA's approval of Orrville's Project Completion Report as discussed in Section C, immediately following this section.

C. Project Completion Report: By August 15, 2017, Orrville shall submit for EPA's review and approval a Project Completion Report. The Project Completion Report shall include, but not be limited to, the information as follows:

1. A description of the existing incandescent street lights and the LED replacements;

2. A list of all lights replaced, includes the total quantity and capacity of all replaced lights;

3. Proof that the original light fixtures were properly recycled or disposed, if recycling is not possible;

4. An estimate of the potential environmental benefits of the Project including an estimate of emission reductions (e.g., SO_2, NO_x, PM, mercury, CO_2) expected to be realized through the replacement of existing incandescent municipal street lights with energy-efficient LED street lights;

5. The certification as follows:

> This information was prepared either by me or under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my evaluation, or the direction and my inquiry of the person(s) who manage the system, or the person(s) directly responsible for gathering the information, I hereby certify under penalty of law that, to the best of my knowledge and belief, this information is true, accurate, and complete. I understand that there are significant penalties for submitting false, inaccurate, or incomplete information to the United States;

The signature (with date) of an Orrville Responsible Official as defined in Title V of the Clean Air Act, or his or her equivalent or designee, following the certification outlined in subparagraph 5 above.

In the matter of:
Docket Number: **CAA-05-2015-0057**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, which was filed on [September 16, 2015], this day in the following manner to the addressees:

Copy by certified mail
return-receipt requested:

Mayor David T. Handwerk
Orrville Municipal Building
207 North Main Street
Orrville, Ohio 44667

Copy by e-mail to
Complainant:

Cynthia Kawakami
Kawakami.cynthia@epa.gov

Copy by e-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated: September 16, 2015

LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S): 7011 1150 0000 2640 4833