



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

MAY 25 2012

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

REPLY TO THE ATTENTION OF:

James S. Kulig, Vice-President and General Manager
B&W Service Company
Babcock and Wilcox Power Generation Group, Inc.
91 Stirling Avenue
P.O. Box 271
Barberton, Ohio 44203-0271

Dear James S. Kulig:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Babcock & Wilcox Power Generation Group, Inc., docket number CAA-05-2012-0025 as indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on MAY 25 2012.

Pursuant to paragraph 35 of the CAFO, Babcock & Wilcox Power Generation Group, Inc. must pay the civil penalty within 30 days of MAY 25 2012. Your electronic funds transfer must display the case name Babcock and Wilcox Power Generation Group, Inc., the docket number CAA-05-2012-0025 and the billing document number 2751203A027.

Please direct any questions regarding this case to J. Matthew Moore, Assistant Counsel, 312.886.5932.

Sincerely,

A handwritten signature in black ink that reads "William MacDowell".

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

Enclosure

cc: LaDawn Whitehead, Regional Judicial Officer/C-14J
Regional Hearing Clerk/E-19J
M. Moore/C-14J
Ed Fasko, Ohio EPA
Bob Hasenyager, Akron AQMD

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. <u>CAA-05-2012-0025</u>
)	
Babcock and Wilcox Power Generation Group, Inc.)	
Barberton, Ohio,)	Proceeding to Assess a Civil Penalty
)	Under Section 113(d) of the Clean Air Act
)	42 U.S.C. § 7413(d)
Respondent.)	
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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)(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 in the U.S. Code of Federal Regulations (C.F.R.) at 40 C.F.R. Part 22.

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

3. Respondent is Babcock and Wilcox Power Generation Group, Inc. (B&W), a Delaware 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).

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5. The parties agree that settling this action pursuant to the terms of this CAFO 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 its right to appeal the final order accompanying the consent agreement.

Statutory and Regulatory Background

9. On January 22, 2003, EPA approved Ohio Administrative Code (OAC) § 3745-31-02 as part of the federally enforceable state implementation plan ("SIP") for Ohio. 68 Fed. Reg. 2909.

10. OAC § 3745-31-02(A) provides, in part:

(1) Except as provided in rule 3745-31-03 of the Administrative Code, no person shall cause, permit, or allow the installation of a new source of air pollutants . . . without first obtaining a permit to install from the director.

(2) The owner or operator of any air contaminant source may apply for a permit to install to voluntarily limit the allowable emissions from the air contaminant source or limit the type of air contaminants authorized to be emitted from the air contaminant source. The director shall act upon such application in accordance with the requirements of rule 3745-31-05 of the Administrative Code

11. On January 2, 2003, EPA approved OAC § 3745-31-05 as part of the federally enforceable SIP for Ohio, 68 Fed. Reg. 2909.

12. OAC § 3745-31-05 provides, in part:

(A) The director shall issue a permit to install ... if he determines that the installation or modification and operation of the air contaminant source ... will:

- (1) Not prevent or interfere with the attainment or maintenance of applicable ... ambient air quality standards; and
- (2) Not result in a violation of any applicable laws ...
- (3) Employ the best available technology

(D) The director may impose such special terms and conditions as are appropriate or necessary to ensure compliance with the applicable laws and to ensure adequate protection of environmental quality. Special terms and conditions ... shall be federally enforceable

13. On October 26, 2010, EPA approved OAC 3745-17-08(B) as part of the federally enforceable SIP for Ohio. 75 Fed. Reg. 65567.

14. OAC § 3745-17-08(B) provides, in part:

No person shall cause or permit any fugitive dust source to be operated; ... without taking or installing reasonably available control measures to prevent fugitive dust from becoming airborne. Such reasonably available control measures shall include, but not be limited to, one or more of the following which are appropriate to minimize or eliminate visible particulate emissions of fugitive dust: . . .

(3) The installation and use of hoods, fans, and other equipment to adequately enclose, contain, capture, vent and control the fugitive dust.

15. On October 1, 1982, EPA approved OAC 3745-15-06(B) as part of the federally enforceable SIP for Ohio. 47 Fed. Reg. 43377.

16. OAC § 3745-15-06(B) provides, in part:

Malfunctions of air pollution control equipment shall be reported as follows:

(1) In the event that any emission source, air pollution control equipment, or related facility breaks down in such a manner as to cause the emission of air contaminants in violation of any applicable law, the person responsible for such equipment shall immediately notify the Ohio

Environmental Protection Agency district office or delegate agency of such failure or breakdown.

(2) The Ohio Environmental Protection Agency district office or delegate agency shall be notified when the condition causing the failure or breakdown has been corrected and the equipment is again in operation.

17. 40 C.F.R. § 52.23 states:

Failure to comply with any provisions of this part or with any approved regulatory provision of a State implementation plan, or with any permit condition... or condition contained within an operating permit issued under an EPA-approved program that is incorporated into the State implementation plan, shall render the person or governmental entity so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement action under section 113 of the Clean Air Act.

18. On April 20, 2009, the Ohio Environmental Protection Agency (OEPA) issued Permit to Install and Operate (PTIO) P0104680 to B&W for electric arc furnace (EAF), P905, and associated emission control devices.

Condition C.1.b)(1)c. requires that each EAF be hooded and vented to a baghouse; and each EAF and emissions control system be operated and maintained in a manner which maximizes the capture and control of furnace emissions.

b. Condition A.10 requires that reportable malfunctions, malfunctions that result in emissions that exceed permitted emission levels, be immediately reported to OEPA.

c. Condition C.1.g)(1) states, pursuant to OAC § 3745-31-05(D), that all the terms and conditions of PTIO P0104680 are federally enforceable requirements.

19. 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 Act, 42 U.S.C. 7413(d)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

20. Respondent owns and operates an iron foundry located at 600 Ford Avenue, West, Barberton, Ohio (the facility).

21. The facility includes, among other process units, an electric arc furnace designated as P905 in PTIO P0104680.

22. The facility is a stationary source as defined in Section 302(z) of the Clean Air Act, 42 U.S.C. § 7602(z) and OAC § 3745-31-01(XXX).

23. EPA conducted a daytime inspection and record review at the facility on May 24, 2011.

24. EPA conducted an early morning inspection at the facility on May 25, 2011.

25. EPA observed visible emissions emanating from the broken duct leading to the baghouse serving P905, as well as visible emissions leaving the stack (vent) exiting the baghouse serving P905.

26. EPA discussed the observed visible emissions with Respondent during the early morning inspection at the facility on May 25, 2011.

27. EPA issued a Notice of Violation (NOV) to Respondent dated August 30, 2011, which stated that Respondent failed to comply with, among other things, certain terms and conditions in PTIO P0104680 and the Ohio SIP.

28. Specifically, the NOV alleges that, among other things, Respondent failed to:

- a. Comply with Condition C.1.b)(1)c. of PTIO P0104680, which requires that each EAF and emissions control system be operated and maintained in a manner which maximizes the capture and control of furnace emissions.
- b. Comply with Condition A.10 of PTIO P0104680, which requires reportable malfunctions be immediately reported to OEPA.
- c. Comply with OAC § 3745-15-06(B), which requires timely notification of the correction of the condition that caused the malfunction of the P905 emissions capture and control system.

29. Respondent's failure to operate and maintain the P905 emissions capture and control system in a manner which maximizes the capture and control of furnace emissions is a violation of condition C.1.b)(1)c. of PTIO P0104680 and OAC § 3745-17-08(B).

30. Respondent's failure to immediately report the malfunction of P905's emissions capture and control system to OEPA is a violation of Condition A.10 of PTIO P0104680 and OAC § 3745-15-06(B).

31. Respondent's failure to notify OEPA of correcting the condition which caused the malfunction of the P905 emission capture and control system in a timely manner is a violation of OAC § 3745-15-06(B)(2).

32. Representatives for Respondent explained, during the October 12, 2011 meeting, that the cause of the visible emissions observed during EPA's early morning inspection was a malfunction of the fan associated with the baghouse used to capture and control emissions from P905.

33. Representatives for Respondent further explained, during the October 12, 2011 meeting, that Respondent completed maintenance on the fan and associated baghouse on June 8, 2011, returning the facility to compliance with PTIO P0104680 and the Ohio SIP.

Civil Penalty

34. 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, and Respondent's cooperation, Complainant has determined that an appropriate civil penalty to settle this action is \$43,656.

35. Within 30 days after the effective date of this CAFO, Respondent must pay a \$43,656 civil penalty by electronic funds transfer. Make the electronic funds transfer payable to "Treasurer, United States of America," and send to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, include the case name, the docket number of this CAFO, and the billing document number.

36. Respondent must send a notice of payment that states the case name, the docket number of this CAFO, and the billing document number to the Compliance Tracker, Air Enforcement and Compliance Assurance Branch and to J. Matthew Moore 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 West Jackson Boulevard
Chicago, Illinois 60604

J. Matthew Moore (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

37. This civil penalty is not deductible for federal tax purposes.
38. 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.
39. 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).

Environmentally Beneficial Activities

40. Representatives for Respondent verified, during the October 12, 2011 meeting with EPA, that B&W has budgeted for and will install a new, larger baghouse which has been designed to capture and control emissions from P905 (as well as a second EAF designated P904).
41. Respondent has represented that B&W will install a bag leak detection system to monitor the operation of the new baghouse. Respondent has also represented that the bag leak detection system will provide B&W information it can use to help assure the baghouse, when

operating, is operating in a manner to maximize the capture and control of furnace emissions.

The bag leak detection system will provide a continuous record of select parameters which will demonstrate the proper operation of the baghouse.

42. Respondent will notify U.S. EPA when the installation of the baghouse and bag leak detection system is complete.

43. Respondent will apply to the Ohio Environmental Protection Agency for revisions to its PTIO that incorporate the use of the bag leak detection system, as well as monitoring conditions for the bag leak detection system. The revised PTIO will establish, as federally enforceable, permit terms and conditions for the installation and operation of a bag leak detection system to assure the new baghouse is operated in a manner consistent with good air pollution control practices to minimize emissions. In addition, the PTIO will establish, as federally enforceable, that the Respondent will develop a site specific monitoring plan that addresses: 1) initial and periodic adjustment of the bag leak detection system, including how the "leak" set-point will be established; 2) operation of the bag leak detection system including quality assurance procedures; and 3) how the bag leak detection system output shall be recorded, stored, and used to determine compliance with applicable emission limits. Respondent will send a copy of this application to the U.S. EPA at the same time it is sent to Ohio EPA.

General Provisions

44. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in this CAFO and in the Notice and Finding of Violation, dated August 30, 2011.

45. Except as provided in Paragraph 44 above, this 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 violations of law.

46. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state, and local laws. Except as provided in paragraph 44, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

47. Respondent certifies that it is complying fully with PTIO P0104680 and the Ohio SIP.

48. 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 Act, 42 U.S.C. § 7413(e).

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

50. 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.

51. Each party agrees to bear its own costs and attorney's fees in this action.

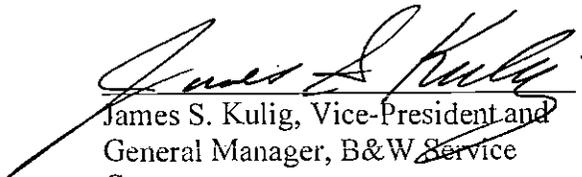
52. This CAFO constitutes the entire agreement between the parties.

53. The requirements of this CAFO shall be considered satisfied when the civil penalty and any stipulated penalties have been paid.

54. EPA agrees to provide a copy of this CAFO to Respondent immediately upon filing with the Regional Hearing Clerk as provided in the Certificate of Service attached hereto.

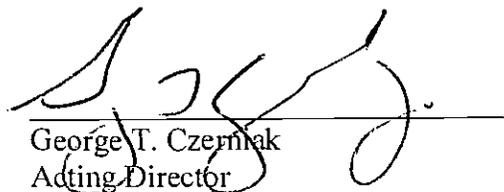
**Babcock and Wilcox Power Generation Group,
Inc., Respondent**

May 17, 2012
Date


James S. Kulig, Vice-President and
General Manager, B&W Service
Company,
Babcock and Wilcox Power Generation
Group, Inc.

United States Environmental Protection Agency, Complainant

MAY 23, 2012
Date

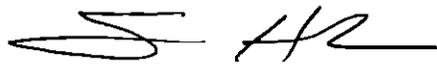

George T. Czerniak
Acting Director
Air and Radiation Division
U.S. Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the Matter of: Babcock & Wilcox Power Generation Group, Inc.
Docket No. CAA-05-2012-0025

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.

May 23, 2012
Date



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

Consent Agreement and Final Order

In the Matter of: Babcock & Wilcox Power Generation Group, Inc.

Docket No. CAA-05-2012-0025

Certificate of Service

I certify that I filed the original and one copy of the Consent Agreement and Final Order (CAFO), docket number CAA-05-2012-0025 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:

James S. Kulig, Vice-President and General Manager
B&W Service Company
Babcock and Wilcox Power Generation Group, Inc.
91 Stirling Avenue
P.O. Box 271
Barberton, Ohio 44203-0271

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

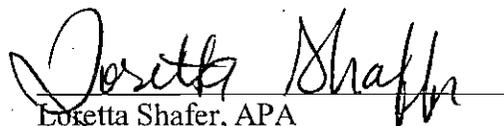
J. Matthew Moore
Office of Regional Counsel (C-14J)
U.S. Environmental Protection Agency
77 W. Jackson Boulevard
Chicago, Illinois 60604

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

Ohio EPA, NEDO
Ed Fasko, Manager Air Pollution Group
2110 East Aurora Road
Twinsburg, Ohio 44087

Akron Regional Air Quality Management District
Bob Hasenyager, Interim Administrator
146 South High Street
Room 904
Akron, Ohio 44308

On the 29 day of May 2012.


Loretta Shafer, APA
PAS

CERTIFIED MAIL RECEIPT NUMBER:

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