

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5



In the Matter of:)
)
Cardinal Operating Company, and)
Buckeye Power, Inc.)
Cardinal Power Plant)
Brilliant, Ohio)
)
Respondents.)
_____)

Docket No. CAA-05-2024-0037

Proceeding to Assess a Civil Penalty
Under Section 113(d) of the Clean Air Act,
42 U.S.C. § 7413(d)

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 Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondents are Buckeye Power, Inc. and Cardinal Operating Company (Respondents), corporations 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).
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. Respondents consent 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. Respondents admit the jurisdictional allegations in this CAFO and neither admit nor deny the factual allegations in this CAFO.

8. Respondents waive their 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 their right to appeal this CAFO.

Statutory and Regulatory Background

9. Under Section 112 of the CAA, the EPA promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Coal- and Oil-Fired Electric Utility Steam Generating Units at 40 C.F.R. §§ 63.9980 through 63.10042 (Subpart UUUUU).

10. The owner or operator of an existing affected facility was required to comply with the requirements of Subpart UUUUU by April 16, 2015.

11. Subpart UUUUU applies to coal-fired electric utility steam generating units.

12. Subpart UUUUU, at 40 C.F.R. § 63.9991(a)(1), referencing Table 2 to NESHAP Subpart UUUUU, states that an existing coal-fired unit that is not combusting low rank virgin coal, that is nonagglomerating virgin coal having a calorific value (moist, mineral matter-free basis) of less than 8,300 British thermal units (Btu)/lb, must comply with a 30-boiler-operating-day rolling average mercury (Hg) emission limit of 1.2 lbs/trillion Btu (TBtu).

13. On January 7, 2021, the Ohio Environmental Protection Agency (OEPA) issued federally enforceable Title V Permit No. P0089700 to Cardinal Power Plant (Cardinal). This Permit also requires Cardinal to comply with Subpart UUUUU.

14. Permit Condition C. 1. b) (1) h. of Title V Permit No. P0089700 states that the Facility “shall comply with ... emission limitations” including a Hg limit of 1.2 lb/TBtu for its EGU boilers.

15. The Administrator of the EPA (the Administrator) may assess a civil penalty of up to \$55,808 per day of violation up to a total of \$446,456 for violations that occurred after November 2, 2015, under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

16. 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.

17. 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

18. Respondents own and operate a coal-fired electric utility steam generating unit source at the Cardinal Power Plant (Cardinal) located at 306 County Road 7E, Brilliant, OH 43913, identified as Unit 3.

19. On July 27, 2023, the EPA sent a CAA Section 114 Information Request (Request) to Cardinal requesting information related to mercury emissions and the mercury control system at its Brilliant, Ohio facility.

20. On August 25, 2023, and September 25, 2023, Cardinal responded to the EPA's Request. In its response, Cardinal reported a total of 30 deviations from the 1.2 lbs/TBtu, 30-boiler-operating-day rolling average, mercury (Hg) emission limitation in 40 C.F.R. § 63.9991(a)(1) between December 26, 2021 and January 24, 2022.

21. In the Boiler Deviation Reports submitted to OEPA for the fourth quarter of 2021 and first quarter of 2022, Cardinal reported that the Hg exceedances occurred due to an upset/malfunction of the JBR chemistry that began on December 25, 2021. Cardinal later identified potential fixes.

22. On February 9, 2024, the EPA issued a Notice and Finding of Violation (NOV/FOV) to Respondents for the 30 reported deviations.

23. By exceeding NESHAP UUUUU's, 30-boiler-operating-day rolling average emission limit for mercury at Unit 3 on certain boiler operating days between December 26, 2021, and January 24, 2022, Respondents violated 40 C.F.R. § 63.9991(a)(1) and the Facility's Title V permit at Condition C. 1. b) (1) h.

Civil Penalty

24. 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, cooperation, and return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$112,621.

25. Penalty Payment. Respondents agree to:

- a. Pay the civil penalty of \$112,621 within 30 days after the effective date of this CAFO.
- b. Pay the civil penalty using any method provided in the table below.

Payment Method	Payment Instructions
<p>Automated Clearinghouse (ACH) payments made through the US Treasury</p>	<p>US Treasury REX/Cashlink ACH Receiver ABA: 051036706 Account Number: 310006, Environmental Protection Agency CTX Format Transaction Code 22 – checking</p> <p>In the comment area of the electronic funds transfer, state Respondents name and the CAFO docket number.</p>
<p>Wire transfers made through Fedwire</p>	<p>Federal Reserve Bank of New York ABA: 021030004 Account Number: 68010727 SWIFT address: FRNYUS33 33 Liberty Street New York, NY 10045 Beneficiary: US Environmental Protection Agency</p> <p>In the comment area of the electronic funds transfer, state Respondents name and the docket number of this CAFO.</p>
<p>Payments made through Pay.gov</p> <p>Payers can use their credit or debit cards (Visa, MasterCard, American Express & Discover) as well as checking account information to make payments.</p>	<ul style="list-style-type: none"> • Go to Pay.gov and enter “SFO 1.1” in the form search box on the top left side of the screen. • Open the form and follow the on-screen instructions. • Select your type of payment from the "Type of Payment" drop down menu. • Based on your selection, the corresponding line will open and no longer be shaded gray. Enter the CAFO docket number into the field
<p>Cashier’s or certified check payable to “Treasurer, United States of America.”</p> <p>Please notate the CAFO docket number on the check</p>	<p>For standard delivery:</p> <p>U.S. Environmental Protection Agency Fines and Penalties Cincinnati Finance Center P.O. Box 979078 St. Louis, Missouri 63197-9000</p> <p>For signed receipt confirmation (FedEx, UPS, Certified Mail, etc):</p> <p>U.S. Environmental Protection Agency Government Lockbox 979078 3180 Rider Trail S. Earth City, Missouri 63045</p>

26. Within 24 hours of the payment of the civil penalty, Respondents must send a notice of payment that states Respondents' names and the docket number of this CAFO to the EPA at the following addresses:

Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
R5airenforcement@epa.gov

Cynthia King
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
king.cynthia@epa.gov

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
r5hearingclerk@epa.gov

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

28. If Respondents do not pay timely the civil penalty, the 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.

29. Respondents 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). Respondents must pay the United States enforcement expenses, including but not limited to attorney's fees and costs incurred by the United States for collection proceedings. In addition, Respondents 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).

30. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, the EPA is required to send to the Internal Revenue Service (IRS) annually, a completed IRS Form 1098-F (Fines, Penalties, and Other Amounts) with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that the EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." The EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number (TIN), as described below, may subject Respondents to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. To provide the EPA with sufficient information to enable it to fulfill these obligations, the EPA herein requires, and Respondents herein agrees, that:

- a. Respondents shall complete an IRS Form W-9 (Request for Taxpayer Identification Number and Certification), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Respondents shall therein certify that their completed IRS Form W-9 includes Respondents' correct TIN or that Respondent(s) has applied and is waiting for issuance of a TIN;
- c. Respondents shall email their completed Form W-9 to the EPA's Cincinnati Finance Center at wise.milton@epa.gov, within 30 days after the Final Order ratifying this Agreement is filed, and the EPA recommends encrypting IRS Form W-9 email correspondence; and

- d. In the event that Respondents have certified in their completed IRS Form W-9 that they do not yet have a TIN but have applied for a TIN, Respondents shall provide the EPA's Cincinnati Finance Center with Respondents' TIN, via email, within five (5) days of Respondents' receipt of a TIN issued by the IRS.

General Provisions

31. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: king.cynthia@epa.gov (for Complainant), and cschiebel@ohioec.org (for Respondents). Respondents understand that the CAFO will become publicly available upon filing.
32. This CAFO resolves only Respondents liability for federal civil penalties for the violations alleged in this CAFO.
33. The CAFO does not affect the rights of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.
34. This CAFO does not affect Respondents responsibility to comply with the CAA and other applicable federal, state, and local laws. Except as provided in paragraph 32, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by the EPA.
35. Respondents certify that they are complying with Subpart UUUUU and Condition C. 1. b) (1) h. of the facility's Title V Permit.
36. This CAFO constitutes an "enforcement response" as that term is used in the EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondents' "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).
37. The terms of this CAFO bind Respondents, their successors and assignees.

38. 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.

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

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

Cardinal Operating Company, Respondent

9/5/2024

Date



Thomas Alban, Vice President,
Cardinal Operating Company

Buckeye Power, Inc., Respondent

9/5/2024

Date

TC Alban

Thomas Alban, Vice President
Power Generation, Buckeye Power Inc.

United States Environmental Protection Agency, Complainant

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: Cardinal Operating Company
Docket No. CAA-05-2024-0037

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.

Date

Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5