

BEFORE THE

JUN 26 2001

OHIO ENVIRONMENTAL PROTECTION AGENCY

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Dayton Power and Light Company	:	
O.H. Hutchings Station	:	<u>Director's Final Findings</u>
9200 Chautauqua Road	:	<u>and Orders</u>
Miamisburg, Ohio 45342	:	

PREAMBLE

It is hereby agreed that:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to The Dayton Power and Light Company ("DP&L"), pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under R.C. Sections 3704.03 and 3745.01.

II. PARTIES

These Orders shall apply to and be binding upon DP&L, its assigns and successors in interest.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as used in R.C. Chapter 3704 and the regulations promulgated thereunder.

IV. FINDINGS OF FACT

The Director of the Ohio EPA has determined the following findings of fact:

1. The Dayton Power and Light Company ("DP&L") operates the O.H. Hutchings Station ("Facility") in Miamisburg, Montgomery County, Ohio. The Facility is identified by Ohio EPA premise number 0857780013. At the Facility, DP&L operates, *inter alia*, a coal-fired boiler, Boiler No. 3 ("B003"), to generate electricity. The Facility is subject to the requirements of Ohio Administrative Code ("OAC") Chapter 3745-77 (Title V).

2. In 1950, DP&L installed B003 which has a rated capacity of 720 MMBtu/hour. An electrostatic precipitator is connected to B003 to control the particulate emissions.
3. On January 6, 1995, Ohio EPA issued a permit to operate ("PTO") to DP&L for B003. The PTO was modified on August 30, 1995. DP&L submitted a Title V application in August on 1996.
4. The particulate emissions limitation for B003 is 0.10 lb/MMBtu, as required by OAC rule 3745-17-10 and the terms and conditions of B003's PTO.
5. On July 15, 1998, DP&L's consultant, Mostardi-Platt ("MP"), conducted a stack test for B003 to measure particulate emissions.
6. On July 20, 1998, DP&L performed a maintenance check of the ash handling system on B003 and identified a defective valve gate on the precipitator hopper of B003. On July 23, 1998 DP&L replaced the defective valve gate.
7. On August 3, 1998, MP verbally notified DP&L that the results from the July 15, 1998 stack test indicated that the particulate emissions rate for B003 was 0.119 lb/MMBtu. MP confirmed this test result in a letter to DP&L dated August 7, 1998.
8. On August 3, 1998, DP&L verbally notified the Regional Air Pollution Control Agency of the Montgomery County Health Department ("RAPCA") of the test results for B003.
9. On August 11, 1998, MP conducted a retest of the particulate emissions rate for B003 and measured 0.036 lb/MMBtu. However, RAPCA did not accept this test result because B003 had been tested while operating at only 86% of its capacity.
10. On October 30, 1998, based upon the July 15, 1998 test results, RAPCA sent a Notice of Violation to DP&L for exceeding the allowable particulate emission limitation for B003, a violation of OAC rule 3745-17-10(C)(1).
11. On February 4, 1999, MP conducted a retest of the particulate emissions rate for B003 while it operated at 94% of its capacity. The particulate emissions rate was determined to be 0.016 lb/MMBtu. RAPCA accepted these test results as demonstration of B003's compliance with OAC rule 3745-17-10(C)(1).
12. The Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of

complying with the following Orders and their benefits to the people of the State to be derived from such compliance.

13. DP&L does not admit to or agree with any findings of fact or conclusions of law made by Ohio EPA or RAPCA. DP&L specifically denies any alleged violation. DP&L consents, however, to the entry of these Orders and agrees to be bound by the terms and conditions herein.

V. ORDERS

Pursuant to R.C. 3704.06, DP&L agrees to pay a civil penalty in the amount of twenty-one thousand dollars (\$21,000) in settlement of Ohio EPA's claim for civil penalties. Within twenty-one (21) days after the effective date of these Orders, DP&L shall pay to Ohio EPA the amount of six thousand dollars (\$6,000) of the total penalty amount. Payment shall be made by certified check made payable to "Treasurer, State of Ohio" and sent to Vicki Galilei, Fiscal Specialist, or her successor, at the following address:

Fiscal Administration
Ohio Environmental Protection Agency
Lazarus Government Center
P.O. Box 1049
Columbus, Ohio 43216-1049

A copy of the check shall be sent to James A. Orlemann, Manager, Engineering Section, or his successor, at the following address:

Division of Air Pollution Control
Ohio Environmental Protection Agency
Lazarus Government Center
P.O. Box 1049
Columbus, Ohio 43216-1049

DP&L shall pay fifteen thousand dollars (\$15,000) of the total civil penalty to fund a supplemental environmentally beneficial project. Specifically, within twenty-one (21) days after the effective date of these Orders, DP&L shall deliver a certified check for fifteen thousand dollars (\$15,000) made payable to the Ohio Department of Natural Resources, Division of Forestry, State Forest Fund for the purpose of funding urban tree-planting projects in Ohio. The check shall specify that such monies are to be deposited into Fund No. 509. The check shall be sent to John Dorka, Deputy Chief, or his successor, at the following address:

Division of Forestry
Ohio Department of Natural Resources
1855 Fountain Square Court, H-1
Columbus, Ohio 43224-1327

VI. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to DP&L.

VII. NOTICE

All documents required by these Orders, unless otherwise specified in writing, shall be submitted to:

Tammy VanWalsen
Environmental Supervisor
Ohio EPA/DAPC
P.O. Box 1049
Columbus, OH 43216-1049

and to:

Regional Air Pollution Control Agency
Attn: Mr. D. Curtis Marshall
451 West Third Street
P.O. Box 972
Dayton, Ohio 45422

VIII. RESERVATION OF RIGHTS

Nothing contained herein prevents the Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal, or equitable action as deemed appropriate and necessary, including seeking penalties against DP&L for noncompliance with these Orders. Nothing contained herein prevents the Ohio EPA from exercising its lawful authority to require DP&L to perform additional activities at the facility pursuant to R.C. Chapter 3704 or any other applicable law in the future, except for those actions or alleged violations specifically referenced in these Orders. Nothing herein restricts the right of DP&L to raise any administrative, legal or equitable claim or defense with respect to such further actions that the Ohio EPA may seek to require of DP&L.

IX. SIGNATORIES

Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to this document.

X. WAIVER

In order to resolve disputed claims, without admissions of fact, violation or liability, DP&L agrees to satisfy these Orders. DP&L specifically denies any alleged violation. Satisfaction of these Orders shall be a full accord and satisfaction for DP&L's alleged liability for the alleged violations cited herein. DP&L hereby waives the right to appeal the issuance, terms and service of these Orders and it hereby waives any and all rights it might have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, the Ohio EPA and DP&L agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, DP&L retains the right to intervene and participate in such an appeal. In such event, DP&L shall continue to satisfy these Orders unless said Orders are stayed, vacated, or modified.

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency



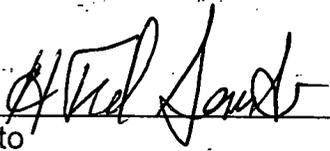
Christopher Jones
Director

6-20-01

Date

IT IS SO AGREED:

Dayton Power and Light Company



H. Ted Santo
Group Vice President of DP&L

6/12/01

Date