

OHIO E.P.A.

DEC 30 2010

BEFORE THE OHIO

ENTERED DIRECTOR'S JOURNAL

ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Dayton Power and Light Company
Killen Electric Generating Station
14769 U.S. Highway 52
Manchester, Ohio 45144

Directors Final Findings
and Orders

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to the Dayton Power and Light Company ("Respondent"), pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 3753.08 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law. No change in ownership of the Respondent or of the facility owned by the Respondent shall in any way alter Respondent's obligations under these Orders.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 3753 and the rules promulgated thereunder.

IV. FINDINGS

The Director of the Ohio EPA makes the following findings:

1. Respondent owns and operates an electric generating station located at 14869 U.S. Highway 52, in Manchester, Ohio. The facility employs a selective catalytic reduction (SCR) process to reduce the emissions of nitrogen oxides to the atmosphere. The process contains two 35,450-gallon anhydrous ammonia storage tanks. Respondent has more than a threshold quantity of a "regulated substance," namely anhydrous ammonia, as defined in OAC Rule 3745-104-01. The Risk Management Plan ("RMP") threshold amount for anhydrous ammonia is 10,000 pounds.

2. Anhydrous ammonia is a regulated substance listed in Ohio Administrative Code ("OAC") Rule 3745-104-04. An owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process, as determined by OAC Rule 3745-104-02, shall comply with the requirements of OAC Rules 3745-104-06 through 49, where applicable, by submitting a Risk Management Plan ("RMP") and implementing a prevention program no later than June 21, 1999 or no later than when the threshold limit is exceeded in a process. On January 3, 2000, Ohio EPA, DAPC received delegation for the RMP program from U.S. EPA.
3. Anhydrous ammonia has a threshold of 10,000 pounds. Respondent stores anhydrous ammonia in an amount that exceeds the threshold established in OAC Rule 3745-104-04; and, as a result, Respondent is subject to the RMP requirements detailed in OAC Rule 3745-104-06.
4. An initial RMP audit was conducted by Ohio EPA on March 22, 2005. The following four deficiencies were discovered during the audit:
 - (a) Respondent failed to include the high and low levels for the safety system specifications and designs, in violation of OAC Rule 3745-104-24.
 - (b) Respondent failed to create emergency shutdown procedures for each part of the process and document that all operating procedures are reviewed annually, in violation of OAC Rule 3745-104-26.
 - (c) Respondent failed to create and implement a schedule for preventative maintenance that includes all critical equipment, in violation of OAC Rule 3745-104-28.
 - (d) Respondent failed to develop a contractor program, in violation of OAC Rule 3745-104-35.
5. Respondent submitted documentation dated May 20, 2005, in response to the April 7, 2005 deficiency letter sent by Ohio EPA. Respondent corrected three of the four deficiencies. The deficiency from Finding 4(d) was not resolved. A letter was sent on May 25, 2005 by Ohio EPA, requiring them to correct the remaining deficiency. Respondent submitted a letter dated June 10, 2005 that resolved Finding 4(d). A completion letter indicating that the remaining deficiency was corrected was mailed to the Company on June 27, 2005.
6. On June 29, 2010, the Ohio EPA conducted the second five-year RMP audit at Respondent's facility and discovered seven violations of the rules. Three were

repeat violations from the initial RMP audit in 2005. The violations were as follows:

- (a) Respondent failed to include in the process safety information, a material and energy balance, in violation of OAC Rule 3745-104-24(D)(1)(g).
 - (b) Respondent failed to address recommendations from the 2008 process hazard analysis (PHA) and to conduct a PHA at least every five years, in violation of OAC Rules 3745-104-25(E) and (F), respectively.
 - (c) Respondent failed to certify annually that the operating procedures are current and accurate, in violation of OAC Rule 3745-104-26(C). This is a repeat violation.
 - (d) Respondent failed to provide refresher training on the operating procedures, operating limits and safety systems and their functions, at least every three years, in violation of OAC Rule 3745-104-27(B).
 - (e) Respondent failed to implement a written mechanical integrity program that includes all critical equipment of the process (pressure vessels and storage tanks; piping systems and components such as valves; relief and vent systems and devices; emergency shutdown systems; controls [including monitoring devices and sensors, alarms and interlocks]; and pumps), in violation of OAC Rules 3745-104-28(A) and (B). Employees involved in maintaining the on-going integrity process have not received the required training, in violation of OAC Rule 3745-104-28(C); and documentation has not been maintained for all inspections and tests performed, in violation of OAC Rule 3745-104-28(D). This is a repeat violation.
 - (f) Respondent failed to provide the two most recent compliance audit reports at the time of the audit, in violation of OAC Rule 3745-104-31(E).
 - (g) Respondent failed to obtain and evaluate information regarding the contractor owner or operator's safety performance and program prior to selecting a contractor, in violation of OAC Rule 3745-104-35(B). This is a repeat violation.
7. A deficiency letter was mailed to Respondent on August 2, 2010. The facility submitted documentation on September 16, 2010 and resolved all the deficiencies, except for Finding 6(e). According to the letter, Respondent will not be able to implement a mechanical integrity program until January 2011.
8. ORC § 3753.06 prohibits violations of provisions of ORC Chapter 3753 or any rule adopted or issued under it. Respondent violated rules adopted under ORC Chapter

3753, specifically, the rules cited in Finding 6.

9. 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 benefits to the people of the State to be derived from such compliance.

V. ORDERS

The Director hereby issues the following Orders:

1. No later than February 1, 2011, Respondent shall submit adequate documentation to the Ohio EPA, that verifies that the deficiency in Finding 6(e) has been corrected.
2. Pursuant to ORC § 3753.09, Respondent shall pay the amount of fourteen thousand five hundred ninety five dollars (\$14,595) in settlement of Ohio EPA's claim for civil penalties. Within fourteen (14) days after the effective date of these Orders, payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for eleven thousand six hundred seventy six dollars (\$11,676)) of the total amount which will be deposited into the Risk Management Plan fund established pursuant to ORC § 3753.05. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

3. In lieu of paying the remaining two thousand nine hundred nineteen dollars (\$2,919) of the civil penalty, Respondent shall fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of \$2,919 to the Ohio EPA's Clean Diesel School Bus Fund (Fund 5CD0). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for \$2,919 within fourteen (14) days after the effective date of these Orders. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying Respondent, the facility, and fund 5CD0 to:

Ohio EPA
Office of Fiscal Administration
Lazarus Government Center
50 West Town Street, Suite 700
Columbus, Ohio 43216-1049

4. A copy of each of the above checks shall be sent to James A. Orlemann, Assistant

Chief, SIP Development and Enforcement, or his successor, at the following address:

Ohio EPA
Division of Air Pollution Control
Lazarus Government Center
50 West Town Street, Suite 700
Columbus, Ohio 43216-1049

5. Should Respondent fail to fund the SEP within the required time frame set forth in Order 3, Respondent shall immediately pay to Ohio EPA \$2,919 of the civil penalty in accordance with the procedures in Order 2.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent has performed all obligations under these Orders and the Chief of Ohio EPA's Division of Air Pollution Control acknowledges, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondent of the obligations that have not been performed, in which case Respondent shall have an opportunity to address any such deficiencies and seek termination as described above.

The certification shall contain the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be submitted by Respondent to Ohio EPA and shall be signed by a responsible official of Respondent. For purposes of these Orders, a responsible official is a "facility official" who is in charge of a principal business function of Respondent.

VII. OTHER CLAIMS

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation, not a party to these Orders, for any liability arising from, or related to the operation of Respondent's facility.

VIII. 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 Respondent.

IX. MODIFICATIONS

These Orders may be modified by agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

X. NOTICE

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049
Attention: Sherri Swihart

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

XI. RESERVATION OF RIGHTS

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in section XII of these Orders.

XII. WAIVER

In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondent's liability for the violations specifically cited herein.

Respondent hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondent hereby waives any and all rights Respondent may have to seek administrative or judicial review of these Orders either in law or equity.

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

XIII. EFFECTIVE DATE

The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

XIV. SIGNATORY AUTHORITY

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 these Orders.

ORDERED AND AGREED:

Ohio Environmental Protection Agency


Chris Korleski
Director

12/29/10
Date

AGREED:

Dayton Power and Light Company


Signature

12-22-2010
Date

ARTHUR G. MEYER
Printed or Typed Name

Senior Vice President and
Title
General Counsel

RVG
12/22/2010

