BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.
DEC 14 2006
ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Cleveland Thermal, L.L.C.	:	**Director's Final Findings**
1921 Hamilton Avenue	:	**and Orders**
Cleveland, Ohio 44114	:	

I certify this to be a true and accurate copy of the official documents as filed in the records of the Ohio Environmental Protection Agency.

By: _____ Date: 12-14-06

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Cleveland Thermal, L.L.C. ("Respondent"), pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 3704.03 and 3745.01.

II. PARTIES

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law. No change in ownership of Respondent or of the Facilities (as hereinafter defined) 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 meanings as defined in ORC Chapter 3704 and the regulations promulgated thereunder.

IV. FINDINGS

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

1. The City of Cleveland, Division of Air Quality ("CDAQ") acts as an agent of Ohio EPA for the Division of Air Pollution Control in Cuyahoga County.

2. Respondent owns and operates two facilities that provide steam and chilled water used for heat and air conditioning, respectively, to buildings in downtown Cleveland. Respondent operates six large utility boilers (Ohio EPA emissions units B001, B002, B003, B004, B005, B006) and two cooling towers located at Respondent's facility located at 1921 Hamilton Avenue, Cleveland, Cuyahoga County. Respondent also operates three large

utility-sized boilers (Ohio emissions units B101, B102 and B104), a coal conveying system and four additional emissions units at its facility located at 2274 Canal Road, Cuyahoga County, Cleveland. The Hamilton Avenue facility and the Canal Road facility shall be collectively referred to herein as the "Facilities."

3. Respondent is a Title V facility and, as such, is subject to the terms and conditions outlined in the Title V permit issued for the facility, as well as applicable regulations outlined in the Ohio Administrative Code ("OAC") Chapter 3745.

4. Prior to December 4, 2004, Dominion Cleveland Thermal, L.L.C. ("Dominion") owned and operated the Facilities. Dominion Cleveland Thermal, Inc. was the sole member of Dominion Cleveland Thermal, L.L.C. Dominion Energy, Inc. owned one hundred percent of the stock of Dominion Cleveland Thermal, Inc.

5. On behalf of Dominion, Envisage Environmental, Incorporated ("Envisage Environmental") conducted performance tests for their Hamilton Avenue facility on June 21 and June 23, 2004. Performance tests were conducted at the Canal Road Facility on July 16, 2004. CDAQ was unable to accept the results of the sampling events due to problems with the quality assurance/quality control documentation. Specifically, sufficient information was not submitted to show that the oxygen and carbon dioxide content of the effluent stack gases were tested in accordance with USEPA Reference Method 3. Dominion submitted the required information during a November 19, 2004 meeting with CDAQ.

6. On July 28, 2004, CDAQ received emission test results from the performance test conducted on June 23, 2004, for emissions unit B002 (Boiler #2 - Hamilton Avenue). The test for emissions unit B002 indicated that the average emission rate for the three runs was 0.12 pounds ("lbs") of particulate emissions ("PE") per million British thermal units ("MMBTU"), as determined by USEPA Reference Method 5. The allowable emissions rate is 0.10 lbs PE/MMBTU as stated in the Title V permit for the facility.

7. CDAQ also received the emission test results from the performance test conducted on June 21, 2004, for emissions unit B003 (Boiler #3 - Hamilton Avenue). The test results for emissions unit B003, as reported by Envisage Environmental, indicated that the average emission rate for the three runs was 0.10 lbs of PE/MMBTU, as determined by USEPA Reference Method 5. The allowable emissions rate is 0.10 lbs PE/MMBTU as stated the Title V permit for the facility.

8. On October 13, 2004, a CDAQ inspector observed dense smoke coming from the western smoke stack of the Hamilton Avenue plant, which corresponds to emissions unit B002. CDAQ conducted visible emissions observations in accordance with USEPA Reference Method 9. At the end of one hour of observations, the average opacity for multiple 6-minute periods throughout the hour was established. The observations showed that for seven 6-minute periods, the opacity of the plume was in violation of OAC Rule 3745-17-07(A)(1)(a) and Part III.A.I.1 of the final Title V permit issued to Dominion. Opacity readings for the highest 6-minute period averaged 47.7%, exceeding the 20% opacity allowed by the Title V permit. On that day, Dominion informed CDAQ that it was

performing calibrations and had overfed fuel in th boiler. In a letter to CDAQ dated December 20, 2004, Dominion stated that emissions unit B002 was undergoing shutdown during the observed opacity violations. Review of Dominion's operating log for emissions unit B002 shows that the boiler was operating at a reduced capacity from approximately 8:00 am until 4:00 pm that day, causing an imbalance in the boiler had contributed to the excess opacity.

9. On October 14, 2004, Envisage Environmental, on behalf of Dominion, conducted performance tests on emissions unit B002. The excess emissions violation associated with emissions unit B002 was corrected as reported in the results of the October 14, 2004, performance test, which showed actual PE of 0.078 lbs/MMBTU, as determined by U.S. EPA Reference Method 5.

10. On November 19, 2004, CDAQ met with Dominion to discuss the performance tests conducted in June and July of 2004. Dominion provided the additional information requested by CDAQ and also provided recalculated results for emissions unit B003 (Boiler #3 -Hamilton Avenue) based on the updated information. The updated emission results showed actual emissions of 0.11 lbs of PE/MMBTU, as determined by USEPA Reference Method 5, exceeding the allowable limit of 0.10 lbs of PE/MMBTU.

11. During the November 19, 2004 meeting with CDAQ, Dominion expressed its intention to conduct additional performance tests on emissions units B001, B002, and B003 prior to the expected transfer of its Facilities on December 7, 2004. CDAQ granted Dominion permission to conduct the performance tests without the 30-day notice required by the Title V permit issued to the facility.

12. On November 28, 2004, CDAQ sent a NOV to Dominion for the above noted violations, including exceeding Title V permit emission limitations for emissions unit B002 during the performance test conducted on June 23, 2004 and for exceeding emission limitations for emissions unit B003 during the performance test conducted on June 21, 2004. Additionally, CDAQ cited Dominion for violating the opacity limitations of its Title V permit on October 13, 2004.

13. On December 4, 2004, CT Acquisitions I, Inc. purchased all of the stock in Dominion Cleveland Thermal, Inc. After the stock purchase, CT Acquisitions I, Inc. changed the name of Dominion Cleveland Thermal, Inc. to Cleveland Thermal, Inc. and the name of Dominion Cleveland Thermal, L.L.C. to Cleveland Thermal, L.L.C. ("Respondent").

14. On December 9, 2004, CDAQ received a letter from Respondent notifying it of the change in ownership. Ohio EPA subsequently transferred the Title V permit for the Facilities to Respondent.

15. On December 20, 2004, Dominion sent a letter to CDAQ in response to the November 28, 2004 NOV. In the letter, Dominion acknowledged the emission limit exceedance for emissions unit B002 during the June 23, 2004 performance test. Dominion explained that the cause of the exceedance was the leaking of feed-water through

corrosion holes in the process and that the boiler was shut down after discovery of the exceedance on June 23, 2004 and was not restarted until the boiler was retested on October 14, 2004. As stated above, the emissions data from the October 14, 2004, test showed emissions of 0.078 lbs PE/MMBTU, which is below the allowable limit of 0.10 lbs PE/MMBTU.

16. In its December 20, 2004 letter, Dominion also acknowledged the opacity violation that CDAQ recorded on October 13, 2004. Dominion stated at that time that according to operational logs and strip chart data that emissions unit B002 was undergoing shutdown during the time of increased opacity noted by CDAQ. However, as noted in Finding 8, review of Dominion's operating log for emissions unit B002 shows that the boiler was operating at a reduced capacity from approximately 8:00 am until 4:00 pm that day, causing an imbalance in the boiler had contributed to the excess opacity.

17. The results of the June 21, 2004 compliance test for emissions unit B003 were reevaluated by Respondent and Ohio EPA. The emissions data from the compliance test conducted by Envisage Environmental Incorporated actually show that the emissions for unit B003 were 0.10 lbs PE/MMBTU, which is the allowable limit. An error in the emissions test report had led Ohio EPA to cite Dominion for the emissions limitation violation. Ohio EPA has determined that, in fact, emissions unit B003 was in compliance with the Title V emissions limitation.

18. Dominion and Respondent have diligently and promptly responded to all non-compliance issues raised by CDAQ and have fully cooperated with CDAQ and Ohio EPA regarding resolution of the above noted issues. As one example, Respondent installed a color camera at the emissions units stack to increase stack resolution and better serve as the first visual evidence of an opacity failure.

19. 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.

V. ORDERS

The Director hereby issues the following Orders:

1. Respondent shall pay the amount of thirty-two thousand and nine hundred dollars ($32,900) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Within sixty (60) 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 twenty-six thousand , three hundred, and twenty dollars ($26,320) of the total amount. 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

A copy of each check 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
P.O. Box 1049
Columbus, OH 43216-1049

2. In lieu of paying the remaining six thousand, five hundred, and eighty ($6,580) of civil penalty, Respondent shall within thirty (30) days of the effective date of these Orders, fund a Supplemental Environmental Project (SEP) by making a contribution in the amount of $6,580 to the Ohio EPA's Clean Diesel School Bus Fund (Fund 5CD). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for $6,580. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to the above-stated address. A copy of this check also shall be sent to James A. Orlemann, or his successor, at the above-stated address.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate upon Ohio EPA's receipt of the official checks required by Section V of these Orders.

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 Respondent's activities at the Facilities cited herein.

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. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

X. RESERVATION OF RIGHTS

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

XI. 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 all of 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.

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency

Joseph P. Koncelik
Director

Date 12/7/06

IT IS SO AGREED:

Cleveland Thermal, L.L.C.

Signature

Date 11/17/06

Marc G. Davis
Printed or Typed Name

President
Title