

Int. 1200

C

L. JUNIOR HORDON  
CLERK OF COMMON PLEAS  
IN THE COURT OF COMMON PLEAS  
MONTGOMERY COUNTY, OHIO

88 DEC 23 PM 1:37  
MONTGOMERY COUNTY  
FILED - COURT CLERK  
COMMON PLEAS

88-3881

STATE OF OHIO, EX REL.  
ANTHONY J. CELEBREZZE, JR.  
ATTORNEY GENERAL OF OHIO,

CASE NO. \_\_\_\_\_

JUDGE \_\_\_\_\_

Plaintiff,

vs.

DAYTON POWER AND LIGHT COMPANY,

Defendant.

CONSENT DECREE

The Plaintiff, State of Ohio, ex rel. Anthony J. Celebrezze, Jr., Attorney General of Ohio ("Plaintiff"), having filed the Complaint in this action against Defendant, Dayton Power and Light Company ("Defendant"), alleging certain violations of federal and state air pollution statutes and rules, and Defendant having denied those allegations and any and all liability with respect thereto, and Plaintiff and Defendant having consented to entry of this Decree for purposes of resolving these issues and avoiding the potential expense of litigation;

THEREFORE, before the taking of any testimony, upon the consent of the parties hereto, and without a determination of either the facts or the law relative to any claim or defense, it is hereby ordered, adjudged and decreed as follows:

I.

JURISDICTION AND VENUE

The Court has jurisdiction over the parties and the subject matter of this case. Venue is proper in this Court. Defendant

consents to the entry of this Decree and waives any objection it may have with respect to the sufficiency of the complaint solely for the limited purpose of settling the State's alleged claims against the Defendant, and nothing in this Consent Decree shall be deemed to constitute an admission of liability for any purpose, nor may Defendant's consent to the entry of this Decree be used against the Defendant for any other purpose whatsoever.

## II.

### CONTINUING JURISDICTION

Until such time as the Defendant has completed the Environmental Study/Project described by Section V of this Consent Decree and fulfilled the obligations under Section IV, VII and X, this Court shall retain jurisdiction over this action for the purpose of making any order or decree which is necessary to carry out the terms of this Consent Decree. Upon completion of said Environmental Study/Project and fulfillment of Defendant's obligations under Sections IV, VII and X, Defendant's obligations under this Decree and this Court's continuing jurisdiction over this case shall terminate. The parties will notify the Court when the Environmental Study/Project is completed.

Any action to enforce this Decree or to secure relief with respect to any violation of its terms shall be commenced no later than six months after the expiration of all Defendant's obligations under this Consent Decree.

III.

SATISFACTION OF CLAIMS AND EFFECT ON OTHER ACTIONS

This Consent Decree merges and bars further action on all claims Plaintiff may have with respect to any and all violations of the following federal and state air pollution control requirements that occurred or may have occurred at Defendant's Killen Electric Generating Station ("Killen Station") prior to October 1, 1986:

1. 40 CFR §§60.11(d), 60.42, 60.43 and 60.44;
2. OAC §§3745-17-07, 3745-17-10, 3745-18-07, and 3745-23-06; and
3. Special Terms and Conditions 5.A, 5.B, and 5.G. of the Permit to Operate (No. 0701000060B001) issued to Defendant by Ohio EPA for Killen Station on July 22, 1983.

Compliance by Defendant with the terms of this Consent Decree shall constitute full satisfaction of any civil or criminal liability by Defendant or by any other part owner(s) of Killen Station, their officers, employees, former officers, and former employees with respect to such violations.

This Consent Decree shall not be construed so as to preclude the State of Ohio or its agencies from seeking monetary, injunctive, or other relief against Defendant for any violations at Killen Station, regardless of when the violations occurred, of any state or federal regulation or requirement other than those listed above. This Consent Decree shall also not be construed so as to preclude the State of Ohio or its agencies from seeking any form of relief against Defendant as a result of its operation of facilities other than Killen Station, regardless of when the violation occurred. Nothing herein shall be construed to limit the authority of the State of Ohio to undertake any action against any person, including the Defendant, in response to conditions arising after the date

hereof which may present an imminent and substantial endangerment to the public health, welfare or the environment. Provided further, that nothing herein shall be construed to prevent the State of Ohio from seeking civil penalties or other relief as provided by law for violations of law committed after the date of the entry of this Consent Decree.

IV.

MONETARY SETTLEMENT

Defendant shall pay One Hundred Thousand Dollars (\$100,000.00) as a civil penalty to the State of Ohio. This amount shall be paid by delivering to Plaintiff's counsel, at the following address, a check made payable to "Treasurer, State of Ohio", within ten days of the Court's approval of this Consent Decree:

Paul D. Hancock  
Assistant Attorney General  
Environmental Enforcement Section  
State Office Tower, 17th Floor  
30 East Broad Street  
Columbus, OH 43266-0410

V.

ENVIRONMENTAL STUDY/PROJECT

Defendant shall monitor SO<sub>2</sub> at two locations, Ginger Ridge and Brush Creek, which are described in more detail in Attachment A. Defendant shall also monitor PM<sub>10</sub> at Ginger Ridge. For a period of two years from the date of entry of this Consent Decree, Defendant shall not be required, under this Consent Decree or otherwise, to operate any air quality monitors at or around Killen Station other than those specified above. Defendant shall begin any

necessary construction and order PM<sub>10</sub> monitors within 30 days after the signing of this Decree. The monitors shall be installed within 30 days after all are received. The monitors shall be operated by Defendant so as to produce eight consecutive quarters of data in accordance with the procedures described in Attachment B. The monitors required by this section shall at all times remain the exclusive property of Defendant.

- VI.

CONTINUOUS EMISSION REPORTING REQUIREMENTS

Defendant shall continue to operate and maintain its existing equipment to continuously monitor and record the opacity of the exhaust gases from its boiler as per its Permit to Operate and in compliance with the requirements of 40 CFR Part 60.13. For a period not to exceed two years from the date of entry of this Consent Decree, Defendant shall submit reports on a monthly basis to the Portsmouth Local Air Agency documenting all monitored opacity values in excess of the levels specified in 40 CFR 60.42(a)(2). These monthly reports, prepared in accordance with 40 CFR 60.7(c), shall be submitted by not later than the 15th of each month and shall address the data obtained during the previous calendar month. If during any calendar month the non-exempt monitored opacity values exceed the foregoing levels for more than 3.0% of the time during which the boiler and opacity monitor are operating simultaneously, Defendant shall submit, in detail, the following additional information to the Portsmouth Local Air Agency within 15 days following the end of the calendar month:

(A) the cause(s) for the exceedance(s); and

(B) the corrective action which has been and/or will be taken by Dayton Power and Light to eliminate the cause(s) for the exceedance(s).

The 3% trigger for excess emission reporting is based upon the average level of monitored excess emissions maintained during the operation of the boiler since approximately January 1, 1985. Calculation of this percentage shall be determined using the data submitted by Defendant in the monthly excess emission report. Calculation of the foregoing percentage shall include only non-exempt operations which shall include all operations except the following (pursuant to OAC Rule 3745-17-07 and 40 CFR Part 60, Subpart D):

1. Start-up and shutdown. During start-up the emissions are exempt until the exhaust gas temperature at the economizer outlet reaches 500°. During shutdown, the emissions are exempt when the exhaust gas temperature at the economizer outlet falls below 600°F. (These start-up and shutdown temperatures are established in accordance with the provisions of OAC Rule 3745-17-07(D)(1)(a) and (D)(2)(a)).
2. Source and/or control equipment malfunctions. Malfunctions are exempt provided the requirements of OAC Rule 3745-15-06 are met.
3. Six-minute time period. NSPS Subpart D, 40 CFR Part 60.42(a)(2) provides that one six-minute period not to exceed 27% opacity during any operating hour is exempt.

For purposes of this Consent Decree, the duration (hours) of any operating period shall equal the number of hours from the first six-minute exceedance during start-up until the last six-minute exceedance during shutdown. The total operating hours for any calendar month shall be the sum of the hours for all operating periods during the month. Appropriate adjustments shall be made to

the total operating hours if a particular operating period overlaps two calendar months.

VII.

IMPROVEMENTS TO CONTROL EQUIPMENT

The Defendant shall complete the following projects in order to further improve the performance of the electrostatic precipitator and associated equipment at Killen Station:

<u>Action</u>	<u>Completion Date</u>
Install new AVC's on both boxes of the electrostatic precipitator	Completed
Install control cabinets for the new rappers for the electrostatic precipitator	Completed
Install 228 new rappers	Completed
Install a microprocessor based supervisory system for all AVC's. (This system will allow control of the AVC's from a central location and will also provide feedback information to the operator on command as well as automatic monitoring of set parameters).	March 31, 1987

Within ten (10) days following each completion date specified above, the Defendant shall submit a written progress report to the Portsmouth Local Air Agency. The person submitting these reports shall certify whether or not each completion date has been met and the date it was met and if it is not met the reason therefore, what steps will be taken to achieve the necessary action, and the date

upon which the action shall be completed.

If any event or circumstance, which Defendant contends is beyond its reasonable control, causes or will cause a delay in Defendant's ability to comply with the deadlines specified above, Defendant shall notify this Court and Ohio EPA in writing immediately upon learning of such event or circumstances or making such a determination. Such notification shall include a description of the specific cause for the delay or anticipated delay, the anticipated length of the delay, the measures Defendant has taken and/or intends to take to minimize the delay, and a schedule by which Defendant will implement such measures. Ohio EPA agrees to review such notification upon receipt, and take the following action:

- a. If the Ohio EPA agrees that the delay was caused by events or circumstances entirely beyond Defendant's reasonable control, and that Defendant has taken or intends to take all reasonable steps to minimize the delay, and that the revised schedule proposed by Defendant is as expeditious as practicable under the circumstances, then the Ohio EPA will so notify Defendant and this Court in writing and Defendant shall be relieved of liability for that part of the delay which Ohio EPA believes was beyond Defendant's reasonable control; or
- b. If Ohio EPA believes that the delay was due, in whole or in part, to events or circumstances that are beyond Defendant's reasonable control, but that other or additional measures ought to be taken to minimize the delay, and/or that a shorter alternative schedule ought to be implemented, then Ohio EPA agrees to so notify Defendant and this Court in writing. If Defendant agrees with Ohio EPA's conclusion on the extent to which the delay was beyond its reasonable control; consents to follow the shorter schedule; and/or agrees to implement the additional measures specified by Ohio EPA's notification, it shall so notify Ohio EPA and this Court in

writing and shall be relieved of further liability for that part of the delay which the parties agree was beyond Defendant's reasonable control; or

- c. If Ohio EPA and Defendant are unable to agree as to any matter covered by this Section, either party may petition this Court for appropriate relief as may be allowed by law.

The notices required in this section to be given to Ohio EPA should be sent to:

Ohio Environmental Protection Agency  
361 East Broad Street  
Columbus, OH 43266-0410

Portsmouth Local Air Agency  
Portsmouth City Health Dept.  
740 Second Street  
Portsmouth, OH 45662

Attn: Ms. Patricia Walling  
(or her successor),  
Chief, Division of Air  
Pollution Control

Attn: Mr. Donald Cavote  
(or his successor),  
Director

The notices required by this section to be sent to Defendant should be sent to:

Hunting W. Brown, Esq.  
The Dayton Power and Light  
Company  
P.O. Box 1247  
Dayton, OH 45401

Ms. Susan Sandro  
The Dayton Power and Light  
Company  
P.O. Box 1247  
Dayton, OH 45401

#### VIII.

#### OPERATING RESTRICTIONS

During the life of the Consent Decree, Defendant shall restrict load changes at Killen Station to 5 MW per minute, provided however, that this requirement shall cease to be effective (1) upon issuance by Ohio EPA of a new, renewed or modified permit to operate Killen Station which permits a higher ramping rate or (2) upon a demonstration by Defendant to Ohio EPA that Killen Station is capable of changing loads at a higher rate without exceeding the

3.0% reporting threshold described in Section VI of this Consent Decree, computed in accordance with the provisions of that section.

This provision shall not relieve Defendant of its obligation to comply with all applicable legal requirements at load changes below 5 MW per minute.

IX.

PERSONS TO WHOM CONSENT DECREE IS APPLICABLE

All provisions of this Consent Decree shall apply to and be binding upon the parties to this action, their assigns and successors in interest. Those provisions of this Consent Decree which place an obligation on the parties, other than for the payment of money, shall be applicable to any parent companies or subsidiaries of Defendant, to their officers, agents, servants and employees, and to all persons, firms or corporations having notice of the Consent Decree who are or will be acting in concert or privity with Defendant. In the event that Defendant proposes to sell or transfer Killen Station prior to the termination of this Consent Decree pursuant to Section II, then prior to such sale or transfer, it shall advise such purchaser or transferee of the existence of this Consent Decree and shall notify all parties to this Consent Decree of such proposed sale or transfer within ten days of the time an agreement or understanding is made respecting said sale or transfer.

X.

COURT COSTS

Defendant shall pay the fee for filing this action. Other than this, each party shall bear its own attorney fees and other costs.

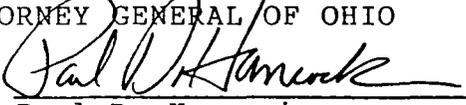
**Hon. CARL D. KESSLER**

Judge, Court of Common Pleas

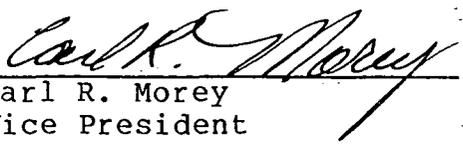
DAYTON POWER AND LIGHT COMPANY

ANTHONY J. CELEBREZZE, JR.  
ATTORNEY GENERAL OF OHIO

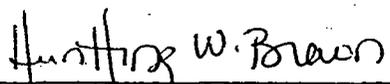
BY:

  
Paul D. Hancock  
Brad Tamaro  
Assistant Attorneys General  
Environmental Enforcement  
Section  
State Office Tower  
30 East Broad Street  
Columbus, OH 43266-0410  
(614) 466-2766

BY:

  
Carl R. Morey  
Vice President

Approved by:

  
Hunting W. Brown, Esq.  
Dayton Power and Light Company  
Courthouse Plaza, S.W.  
P.O. Box 1247  
Dayton, OH 45401  
(513) 224-6216

0862j

ATTACHMENT A

Description of Monitoring Sites

- A) Ginger Ridge - This site is located south of Ginger Ridge Road near a cemetery, approximately two miles from U.S. 52. This is on a ridge northeast of Stuart Station. The UTM coordinates are 268.50 Km East and 4,281.63 Km North.
- B) Killen East - This site will be located along a lane 700 feet south of U.S. 52 on Dayton Power and Light property. The lane begins at U.S. 52, 300 feet east of the intersection of Brush Creek Road and U.S. 52. This is east of Killen Station. The UTM coordinates are approximately 266.0 Km east and 4,280.4 Km north. The state plan coordinates are 248,675 feet north and 1,727,090 feet east.

Attachment B

PM-10

Guidance for PM-10 is provided in the proposal of March 20, 1984 in the Federal Register Vol. 49, No. 55 pg. 10408 through pg. 10462.

Specific monitor siting information can be found in Part 58, Appendix E, particularly Figure 2 and Table 5 of the above-mentioned proposal.

Quality assurance requirements can be found in Appendices A&B of Part 58 as modified by the March 20, 1984 proposal, and the recently promulgated changes (March 19, 1986 F.R. Vol. 51, No. 53 pg. 9582-9600). The following is a summary of the requirements:

Siting:

Microscale - height above ground - 2 to 7 meters

Middle, neighborhood, urban, and regional scales: 2 to 15 meters above ground level.

- For all scales:
1. Horizontal distance from wall, parapets, or penthouses must be greater than 2 meters.
  2. Should be >20 meters from trees
  3. Must have unrestricted airflow 270° around the sampler
  4. No furnace or incinerator should be nearby
  5. Distance from sampler to obstacles, such as buildings, must be at least twice the height the obstacle protrudes above the sampler
  6. Distance from road varies with traffic count (see Figure 2 of the March 20, 1984 proposal).

Quality Assurance:

At least one site must be colocated, with the colocated monitor being 2-4 meters from the designated monitor.

At least one monitor (site) must be audited each calendar quarter with 100% of the instruments audited each year (if four or fewer sites).

The audits must be conducted by an auditor who is independent of the person(s) operating, processing and in charge of the data from the monitor. This is usually handled by a contractor.

Guidance for the methodology of the audit is provided in the March 20, 1984 proposal.

Ohio EPA reserves the right to audit the instruments at our mutual convenience.

Quality Assurance:

Refer to Appendices A&B of Part 58 as amended March 19, 1986.

At least one monitor must be audited each calendar quarter, with 100% of the monitors audited each year (if four or fewer sites).

Precision and span checks must be made at least once each two weeks.

The audits must be conducted by an auditor who is independent of the person(s) operating, processing and in charge of the data from the monitor. This is usually handled by a contractor.

Ohio EPA reserves the right to audit the instruments at the parties' mutual convenience.

The Monitor:

The monitor must be designated reference or equivalent by the USEPA. Ohio EPA will not accept flame photometric instruments due to problems with being able to audit them.

Data Submission

PM-10 & SO<sub>2</sub>

Ohio EPA prefers that the ambient data be submitted on magnetic tape in SAROAD format. Ohio EPA will accept data on SAROAD data coding forms.

The ambient data must be submitted to Ohio EPA, DAPC no later than eighteen calendar days after the end of each calendar quarter.

Quality Assurance Data must be submitted to the Quality Assurance coordinator (Randy Hock, Ohio Environmental Protection Agency, 361 East Broad Street, Columbus, Ohio 43266-0410), no later than 45 days after the end of the calendar quarter.

0862j

The Monitor:

The PM-10 monitor must be capable of meeting the requirements of 40 CFR, Part 53 as proposed (March 20, 1984), and the manufacturer must provide a guarantee that the monitor will be modified (if necessary) to meet the promulgated reference or equivalency requirements.

The two monitors available of which Ohio EPA is aware, are manufactured by:

Wedding & Associates Inc.  
P.O. Box 1756  
Fort Collins, Colorado 80522  
303-221-0678

and

General Metal Works, Inc. (Subsidiary of Andersen  
145 South Miami Samplers, Inc.)  
Village of Cleves, Ohio 45002  
513-941-2229

If the Andersen-Sierra (SA-391A) monitor is chosen, we will require a flow recorder to be used. The flow controller Andersen-Sierra uses is unreliable.

SO<sub>2</sub>

Guidance for SO<sub>2</sub> is found in 40 CFR, Part 58 as amended through March 19, 1986. Siting information can be found in Appendix E of Part 58. Quality Assurance requirements are to be found in Appendices A&B of Part 58. The following is a summary of the requirements:

Siting of probe:

Height above ground-3 to 15 meters

Vertical and horizontal distance from supporting structure greater than one meter.

Also:

1. Should be >20 meters from the dripline and must be >10 meters from the dripline when the tree(s) act as an obstruction.
2. Distance from inlet probe to obstacle, such as buildings, must be at least twice the height the obstacle protrudes above the inlet probe.
3. Must have unrestricted airflow 270° around the inlet probe, or 180° if probe is on the side of a building.
4. No furnace or incinerator flues should be nearby.