

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
AIR ENFORCEMENT DIVISION, OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE  
BEFORE THE ADMINISTRATOR

In the Matter of:

American Bituminous Power Partners, L.P.,

Respondent.

Administrative Compliance Order on Consent  
AED-CAA-113(a)-2019-0001

**ADMINISTRATIVE COMPLIANCE ORDER**

**A. PRELIMINARY STATEMENT**

1. This Administrative Compliance Order (“Order”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA” or “Agency”) by Section 113(a) of the Clean Air Act (“CAA” or the “Act”), 42 U.S.C. § 7413(a)(3) and (4).
2. On the EPA’s behalf, Phillip A. Brooks, Division Director of the Air Enforcement Division, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, is delegated the authority to issue this Order under Section 113(a) of the Act.
3. Respondent is American Bituminous Power Partners, L.P. (hereinafter, “Respondent”), a corporation doing business in the state of West Virginia. Respondent is a “person” as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e). Respondent owns and/or operates Grant Town Power Plant (hereafter, the “Facility”), located in Marion County in the state of West Virginia. The Facility has two eastern bituminous coal refuse-fired electric utility steam generating units (“EGUs”), identified as Unit 1A and Unit 1B. Each unit has a nominal 40 megawatt (“MW”) capacity.
4. Respondent signs this Order on consent.

## B. STATUTORY AND REGULATORY BACKGROUND

5. Section 112 of the CAA, 42 U.S.C. § 7412, authorizes the Administrator of the EPA to regulate hazardous air pollutants (“HAPs”) which may have an adverse effect on health or the environment.
6. Pursuant to Section 112 of the CAA, the EPA promulgated the National Emission Standards for Hazardous Air Pollutants for the Coal- and Oil-Fired EGU source category on February 16, 2012, under title 40, part 63, subpart UUUUU. 77 Fed. Reg. 9304. These standards are commonly known as the “Mercury and Air Toxics Standards.” *Id.* (hereafter, “MATS”). The MATS adopted emission limits on mercury, acid gases and other toxic pollutants for affected coal and oil-fired EGUs. *Id.* The EPA promulgated a single acid gas emission standard for all coal-fired power plants, using hydrochloric acid (“HCl”) as a surrogate for all acid gas HAP, and allowed an alternative emission standard for sulfur dioxide (“SO<sub>2</sub>”) as a surrogate for acid gas HAP. *Id.*
7. The final MATS rule was challenged by industry, states, environmental organizations and public health organizations in the U.S. Court of Appeals for the District of Columbia (“the Court”). 84 Fed Reg. 2670, 2673 (Feb. 7, 2019). The U.S. Supreme Court ruled on January 29, 2015, that, among other findings, the Agency was required to consider the cost of the MATS, and remanded the MATS to the Court. *Michigan v. EPA*, 135 S. Ct. 2699 (2015).
8. On February 7, 2019, in response to the U.S. Supreme Court decision in *Michigan v. EPA*, and multiple intervening events, the EPA proposed to find that it is not “appropriate and necessary” to regulate HAP emissions from coal-and oil-fired EGUs under Section 112 of the CAA, but did not alter or eliminate the CAA section 112 emissions standards imposed by the MATS. 84 Fed Reg. at 2674-79.
9. Pursuant to 40 C.F.R. § 63.9981, the MATS applies to owners or operators of coal-fired EGUs or oil-fired EGUs, as defined in 40 C.F.R. § 63.10042.
10. Pursuant to 40 C.F.R. § 63.2, “owner or operator” is defined as “any person who owns, leases, operates, controls, or supervises a stationary source.”

11. Section 111(a)(3) of the Act, 42 U.S.C. § 7411(a)(3), and 40 C.F.R. § 63.2 defines a “stationary source” as “any building, structure, facility, or installation which emits or may emit any air pollutant.”
12. Pursuant to 40 C.F.R. § 63.2, “affected source” is defined as “the collection of equipment, activities, or both within a single contiguous area and under common control that is included in a Section 112(c) source category or subcategory for which a Section 112(d) standard or other relevant standard is established pursuant to Section 112 of the Act.”
13. Pursuant to 40 C.F.R. § 63.9982, the affected source to which the provisions of the MATS, 40 C.F.R. Part 63, Subpart UUUUU, applies is the collection of all existing coal- or oil-fired EGUs, as defined in 40 C.F.R. § 63.10042, within a subcategory, [and] ... each new or reconstructed coal- or oil-fired EGU, as defined in 40 C.F.R. § 63.10042.”
14. The MATS rule identifies emission standards for seven subcategories of existing and new EGUs, but there is no separate subcategory for existing EGUs that fire eastern bituminous coal refuse. 40 C.F.R. § 63.9990.
15. As the Agency has stated, all coal-refuse fuels are fired in fluidized bed combustors (“FBC”), which utilize limestone injection technology to minimize SO<sub>2</sub> emissions and increase heat transfer efficiency. 84 Fed Reg. at 2702. During the MATS rulemaking, the Agency received multiple comments stating that, for most eastern bituminous coal refuse-fired EGUs, limestone injection alone may be an inadequate and ineffective technology to meet MATS emission standards for HCl or SO<sub>2</sub>. *Id.*
16. On February 7, 2019, for existing EGUs firing eastern bituminous coal refuse, the EPA solicited comments and information on the need for the establishment of a specific MATS subcategory for acid gas emission standards and on the nature, cost, feasibility, and effectiveness of emission control technologies. 84 Fed Reg. at 2700-03. The Agency also solicited comment on potential HCl and SO<sub>2</sub> emission standards for a new MATS subcategory of eastern bituminous coal refuse-

fired EGUs, including a Maximum Achievable Control Technology (“MACT”) floor analysis and results. *Id.* The EPA is currently reviewing comments it has received.

17. The West Virginia Department of Environmental Protection (WVDEP) has informed the EPA that it supports the creation of a separate MATS subcategory and SO<sub>2</sub> emission standard (as a surrogate for acid gas HAP) for existing EGUs that fire eastern bituminous coal refuse.
18. Environmental groups located near abandoned mine lands have expressed support for burning coal refuse to generate electricity because the coal refuse-fired EGUs consume large quantities of waste coal refuse from outdoor sites that are exposed to ambient air and degrade the quality of local water bodies. Removal of the coal waste material allows for land reclamation where dangerous waste coal piles are located. Letter from Andy McAllister, Regional Coordinator, Western Pa. Coalition for Abandoned Mine Reclamation, to Keith Rothfus, U.S. House of Representatives (Sept. 11, 2017); Letter from Daniel McMullen, President Elect, Clearfield Creek Watershed Association, to Keith Rothfus, U.S. House of Representatives (March 15, 2016); Letter from Robert W. Piper, Jr., District Manager, Cambria County Conservation District, to Patrick J. Toomey, U.S. Senate (March 14, 2016).
19. The WVDEP has submitted comments to the West Virginia Public Service Commission (WVPSC) to emphasize the environmental benefits provided by the Facility, including the reclamation of approximately 1,327 acres of coal waste sites across West Virginia, and significant reductions in acid mine drainage associated with these sites. Letter from Austin Caperton, Secretary of WVDEP, to Michael A. Albert, Chairman of WVPSC (Sept. 5, 2017).
20. Environmental groups located near abandoned mine lands also support the use of coal refuse FBC residual ash, also known as fly ash, in mine reclamation activities, as the high-alkaline filler neutralizes the acidity of former waste coal sites. Letter from Robert E. Hughes, Executive Director, Eastern PA Coalition for Abandoned Mine Reclamation, to Keith Rothfus, U.S. House of Representatives (Sept. 11, 2017); Letters from Len Lichvar, Chairman, Stonycreek-Conemaugh River Improvement Project to Bob Casey, U.S. Senate, and Pat Toomey, U.S. Senate

(May 6, 2016); Letter from Janis Long, President, Blacklick Creek Watershed Association, Inc., to Whom It May Concern (Feb. 19, 2016). WVDEP has classified FBC residual ash from the Facility as a beneficial reuse product for mine reclamation. WV ADC §33-1-5.5.b.4.D.

21. As the Agency has stated, all coal refuse-fired EGUs are currently emitting mercury at levels below the MATS emission standards, and FBC units, including those that burn coal refuse, are among the best performers for mercury control. 84 Fed. Reg. at 2702.
22. Respondent has asserted that it is not feasible for the Facility to meet the current MATS emission standard for HCl (or its SO<sub>2</sub> acid gas HAP surrogate) when operating with the coal refuse it was designed to eliminate. A Facility shutdown would result in a loss of approximately 100 jobs at the Facility, and 70 jobs at companies that support the Facility.

### **C. FINDINGS**

23. Respondent owns and/or operates two existing coal-fired EGUs, as defined in 40 C.F.R. § 63.10042, that fire eastern bituminous coal refuse.
24. Respondent's operation at the Facility is subject to the MATS.
25. On January 30, 2014, WVDEP granted the Facility a one-year compliance extension of the deadline for meeting the MATS HCl standard. On April 11, 2016, WVDEP granted the Facility an additional three-year extension of this deadline. The extension expired on April 16, 2019.
26. On April 19, May 6 and May 9, 2019, Respondent provided information to the EPA that serves as the basis for this Order.
27. The Facility is currently in noncompliance with the MATS emission standard for HCl because the Facility cannot meet the HCl emission standard, or the SO<sub>2</sub> acid gas HAP surrogate emission standard, while burning the coal refuse fuel for which the Facility was designed.
28. Respondent asserts that it cannot currently comply with the MATS emission standard for HCl at Units 1A and 1B of the Facility without halting operations and thereby potentially impacting coal refuse fuel use, coal refuse recovery operations from abandoned mine lands, and abandoned mine site remediation activities.

29. Respondent asserts that the Facility is and has always been in compliance with MATS emission standards for mercury and filterable particulate matter since the MATS emission standards were promulgated.
30. Respondent asserts that the Facility is and has always been in compliance with MATS work practice standards for organic HAPS since the MATS emission standards were promulgated.
31. Respondent asserts that the Facility is in compliance with all other Clean Air Act requirements.
32. WVDEP has informed the EPA that it supports issuance of this Order.

#### **D. ORDER**

33. Respondent is ordered to take the actions described in this section of the Order.
34. By 11:59 pm on April 15, 2020, Respondent shall achieve full compliance with the MATS at Units 1A and 1B at the Facility.
35. From the effective date of this Order, pursuant to Paragraph 48, to April 15, 2020, Respondent shall operate Units 1A and 1B so that the emissions from the units do not exceed 0.41 pounds/MMBtu SO<sub>2</sub>. Compliance with this limit shall be determined according to the requirements and procedures in 40 C.F.R. Part 63, Subpart UUUUU.
36. No less than 90 days prior to achieving full compliance with MATS at the Facility, Respondent shall provide a detailed written notice to the EPA regarding its plan for compliance with MATS, provided, however, if the EPA promulgates a new standard applicable to the Facility that Respondent is able to meet upon the effective date of such standard, Respondent may satisfy the notice requirement in this Paragraph by providing notice of this fact within 30 days of the effective date, pursuant to the process specified in Paragraph 45 of this Order.
37. Within 30 days of achieving full compliance with the MATS at the Facility, Respondent shall provide written notice to the EPA indicating that compliance has been achieved and the date by which it was achieved, provided, however, if the EPA promulgates a new standard applicable to the Facility that Respondent is able to meet upon the effective date of such standard, Respondent

may satisfy the notice requirement in this Paragraph by providing notice of this fact within 30 days of the effective date, pursuant to the process specified in Paragraph 45 of this Order.

38. Respondent acknowledges that the Act does not provide the EPA the authority to extend or re-issue this Order beyond the Termination Date set out in Paragraph 50 below.

#### **E. OTHER TERMS AND CONDITIONS**

39. Respondent admits the jurisdictional allegations contained in Sections A (Preliminary Statement) and B (Statutory and Regulatory Background) of this Order.
40. Respondent neither admits nor denies the findings in Section C (Findings) of this Order.

#### **F. GENERAL PROVISIONS**

41. Any violation of this Order may result in a civil administrative or judicial action for an injunction or civil penalties of up to \$99,681 per day per violation, or both, as provided in Sections 113(b)(2) and 113(d)(1) of the Act, 42 U.S.C. §§ 7413(b)(2) and 7413(d)(1), as well as criminal sanctions as provided in Section 113(c) of the Act, 42 U.S.C. § 7413(c). The EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action.
42. Nothing in this Order shall relieve Respondent of the duty of achieving and maintaining compliance with all applicable provisions of the Act or other federal, state or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
43. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
44. The provisions of this Order shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns. From the Effective Date of this Order until the Termination Date as set out in Paragraph 50 below, Respondent must give written notice and a copy of this Order to any successors in

interest prior to any transfer of ownership or control of any portion of or interest in the Facility. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to the EPA. In the event of any such transfer, assignment, or delegation, Respondent shall not be released from the obligations or liabilities of this Order unless the EPA has provided written approval of the release of said obligations or liabilities.

45. Unless this Order states otherwise, whenever, under the terms of this Order, written notice or other documentation is required to be given, it shall be directed to the individuals specified at the addresses below unless those individuals or their successors give notice of a change of address to the other party in writing:

Phillip A. Brooks  
Director, Air Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
US Environmental Protection Agency  
Mail Code 2242A, Room 1119  
1200 Pennsylvania Ave, NW  
Washington, DC 20460 mail or 20004 courier (note Room 1119 on courier packages)  
[brooks.phillip@epa.gov](mailto:brooks.phillip@epa.gov)

Donna Mastro  
Acting Deputy Regional Counsel for Enforcement  
United State Environmental Protection Agency, Region III  
Office of Regional Counsel, Air Branch (3RC00)  
Philadelphia, PA 19103-2029  
[mastro.donna@epa.gov](mailto:mastro.donna@epa.gov)

Steve Friend  
Plant Manager  
American Bituminous Power Partners, LP  
Grant Town Power Plant  
228 ABPP Drive  
P.O. Box 159  
Grant Town, WV 26574  
[sfriend@ambitwv.com](mailto:sfriend@ambitwv.com)

Jeff Holmstead  
Bracewell LLP  
2001 M Street NW, Suite 900  
Washington D.C. 20036-3310  
[jeff.holmstead@bracewell.com](mailto:jeff.holmstead@bracewell.com)

All notices and submissions shall be considered effective upon receipt.

46. To the extent this Order requires Respondent to submit any information to the EPA, Respondent may assert a business confidentiality claim covering part or all of that information, but only to the extent and only in the manner described in 40 C.F.R. Part 2, Subpart B. The EPA will disclose information submitted under a confidentiality claim only as provided in 40 C.F.R. Part 2, Subpart B. If Respondent does not assert a confidentiality claim, the EPA may make the submitted information available to the public without further notice to Respondent.
47. Each undersigned representative of the Parties certifies that he or she is authorized to enter into the terms and conditions of this Order to execute and bind legally the Parties to this document.

#### **G. EFFECTIVE DATE AND OPPORTUNITY FOR A CONFERENCE**

48. Pursuant to Section 113(a)(4) of the Act, an Order does not take effect until the person to whom it has been issued has had an opportunity to confer with the EPA concerning the alleged violations. By signing this Order, Respondent acknowledges and agrees that it has been provided an opportunity to confer with the EPA prior to issuance of this Order. Accordingly, this Order will take effect immediately upon signature by the latter of Respondent or the EPA.

#### **H. JUDICIAL REVIEW**

49. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1).

#### **I. TERMINATION**

50. This Order shall terminate on the earlier of the following (the “Termination Date”) at which point Respondent shall operate in compliance with the Act:
- a. 11:59 pm April 15, 2020;
  - b. The effective date of any determination by the EPA that Respondent has achieved compliance with all terms of this Order;

- c. Immediately upon receipt by Respondent of notice from the EPA finding that an imminent and substantial endangerment to public health, welfare, or the environment has occurred; or
- d. The effective date of an acid gas HCl emission standard, or SO<sub>2</sub> emission standard as a surrogate for an acid gas HCl emission standard, that the EPA promulgates and that is applicable to the Facility.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
AIR ENFORCEMENT DIVISION, OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE  
BEFORE THE ADMINISTRATOR

In the Matter of:

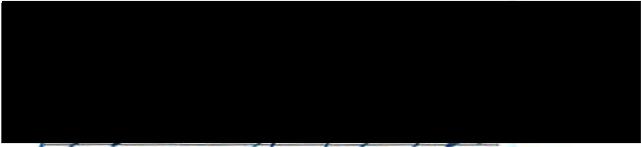
American Bituminous Power Partners, L.P.,

Respondent.

Administrative Compliance Order on Consent  
AED-CAA-113(a)-2019-0001

For United States Environmental Protection Agency, Air Enforcement Division, Office of Enforcement and Compliance Assurance:

5/21/2019  
Date



Phillip A. Brooks  
Director, Air Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
Mail Code 2242A, Room 1119  
1200 Pennsylvania Ave, NW  
Washington, DC 20460 mail or 20004 courier (note Room 1119  
on courier packages)

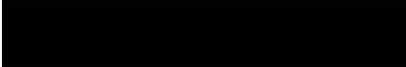
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
AIR ENFORCEMENT DIVISION, OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE  
BEFORE THE ADMINISTRATOR

In the Matter of:

American Bituminous Power Partners, L.P.,  
Respondent.

Administrative Compliance Order on Consent  
AED-CAA-113(a)-2019-0001

For American Bituminous Power Partners, L.P.:

  
\_\_\_\_\_  
Signature

May 21, 2019  
\_\_\_\_\_  
Date

Printed Name: Ken Niemann  
Title: Executive Director, American Bituminous Power Partners, L.P.  
Address: Grant Town Power Plant  
228 ABPP Drive  
P.O. Box 159  
Grant Town, WV 26574

**CERTIFICATE OF SERVICE**

I certify that the foregoing "Administrative Compliance Order" in the Matter of American Bituminous Power Partners, L.P., Order AED-CAA-113(a)-2019-0001, was filed and copies of the same were mailed to the parties as indicated below.

Certified Mail

Ken Niemann  
Executive Director  
American Bituminous Power Partners, L.P.  
Grant Town Power Plant  
228 ABPP Drive  
PO Box 159  
Grant Town, WV 26574

Jeff Holmstead  
Bracewell LLP  
2001 M Street NW, Suite 900  
Washington D.C. 20036-3310

Laura M. Crowder  
Acting Director, Division of Air Quality  
West Virginia Department of Environmental Protection  
601 57th St SE  
Charleston, WV 25304

Date

5/21/19

  
Tawanna Cathey