



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAR 2 2004

REPLY TO THE ATTENTION OF
C-14J

VIA FACSIMILE

Jeffrey Jones, Esq.
City of Detroit Law Department
1650 First National Building
Detroit, MI 48226

Re: Mistersky Power Station

Dear Jeff:

Enclosed is a copy of the executed Administrative Order regarding the above captioned case.

If you have any questions about the Order, please contact me at (312) 886-6831.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Cynthia A. King".

Cynthia A. King

Enclosure

cc: Teresa Seidel
District Supervisor
Detroit Office
Cadillac Place, Suite 2-300
3058 West Grand Blvd.
Detroit, Michigan 48202-6058

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)
)
City of Detroit,) **Administrative Order**
Department of Public)
Lighting) **EPA-5-04-113(a) MI-04**
Mistersky Power Station)
Detroit, Michigan)
)
Proceeding Under)
Section 113(a)(3) of)
the Clean Air Act,
42 U.S.C. § 7413(a)(3)

Administrative Order

1. The Director of the Air and Radiation Division, United States Environmental Protection Agency (U.S. EPA), Region 5, is issuing this Order to the City of Detroit, Department of Public Lighting, Mistersky Power Station, located in Detroit, Michigan (Detroit) under Section 113(a)(3) of the Clean Air Act (Act), 42 U.S.C. § 7413(a)(3).

Statutory and Regulatory Background

2. The Acid Rain Program, which implements the Acid Deposition Control provisions found in Subchapter IV-A of the Act, 42 U.S.C. §§ 7651-7651o, is codified at 40 C.F.R. Parts 72 through 78. The Acid Rain Program sets forth permitting, operating, monitoring, certification, recordkeeping and reporting requirements for "affected units," as that term is defined under the program.

3. Pursuant to 40 C.F.R. § 72.6, any unit listed in table 2 or 3 of § 73.10 is considered an "affected unit" subject to the requirements of the Acid Rain Program.

4. The Acid Rain Program requires, among other things, that the owner or operator of an affected unit monitor, record and report sulfur dioxide (SO₂), nitrogen oxides (NO_x) and carbon dioxide (CO₂) emissions, volumetric flow and opacity data.

5. 40 C.F.R. § 75.20, requires that the owner or operator shall ensure that each continuous emission or opacity monitoring

system required meets the initial certification requirements of this section.

6. 40 C.F.R. § 75.20(b), requires that whenever there is a replacement, modification or change to the flue gas handling system or the unit operation that may significantly change the flow or concentration profile, the monitoring system shall be recertified.

7. 40 C.F.R. § 75.21, requires that each continuous emission monitoring system shall be operated, calibrated and maintained according to the quality assurance and quality control procedures outlined in Appendix B of Part 75.

8. Appendix B § 2.3.1 requires that each primary and redundant backup monitoring system, perform relative accuracy test audits (RATA) semiannually or annually if the requirements of Appendix B § 2.3.1.2 are met.

9. Appendix B § 2.3.3(a) allows for a grace period following the operating quarter in which the owner or operator of an affected unit must conduct the required RATA.

10. Appendix B § 2.3.3(c) states that if at the end of the grace period, the RATA has not been completed, data from the monitoring system shall be invalid.

11. 40 C.F.R. § 75.62, requires that a monitoring plan be submitted to the U.S. EPA Clean Air Markets Division no later than 45 days prior to the initial certification test, at the time of a recertification application submission, and in each electronic quarterly report (EDR).

12. 40 C.F.R. § 75.64, requires the owner or operator to submit quarterly EDRs for each affected unit to the Administrator.

13. 40 C.F.R. § 75.70(d), requires that affected units subject to the Subpart H NOx Budget Program comply with the certification and recertification procedures of Part 75.

14. Under Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), the Administrator of U.S. EPA may issue an order requiring compliance to any person who has violated or is violating the Acid Rain Program. The Administrator has delegated this authority to the Director of the Air and Radiation Division.

Findings

15. Detroit owns and operates an emission source, known as the Mistersky Power Station, located at 5425 West Jefferson, Detroit, Michigan (Mistersky Facility).

16. The Mistersky Facility has two Boiler Units, 5 and 6, and a combustion gas turbine unit (GT-1), all of which are "affected units" as that term is defined at 40 C.F.R. § 72.2 and 40 C.F.R. § 75.70, and as such, are subject to the Acid Rain Program at 40 C.F.R. Parts 75 through 78.

17. Pursuant to 40 C.F.R. § 75.4, the initial certification for Boiler Unit 5 was due January 1, 1995, but the Mistersky Facility was given an extension to July 1, 1995.

18. The initial certification conducted by Detroit on January 14, 1996, and submitted to Michigan Department of Environmental Quality (MDEQ), U.S. EPA Region 5 and U.S. EPA Clean Air Markets Division was deemed late and incomplete by U.S. EPA. Detroit did not re-submit its initial certification.

19. In December, 1998, Boiler Unit 5 at the Mistersky Facility was converted from oil to gas.

20. Pursuant to 40 C.F.R. § 75.20(b), Boiler Unit 5 should have been recertified in January, 1999 after the conversion from oil to gas was complete. Detroit failed to complete the recertification before Boiler Unit 5 was shut-down in June 2000.

21. Boiler Unit 5 is expected to be on-line again in February 2004.

22. Pursuant to 40 C.F.R. § 75.4, the initial certification for Boiler Unit 6 was due January 1, 1995, but the Mistersky Facility was given an extension to July 1, 1995.

23. The initial certification conducted by Detroit on August 14, 1998, and submitted to MDEQ, U.S. EPA Region 5 and U.S. EPA Clean Air Markets Division was deemed untimely and incomplete by U.S. EPA. Detroit attempted to re-submit its initial certification, but did not properly re-submit its initial certification.

24. In May, 1999, Boiler Unit 6 was converted from oil to gas.

25. Pursuant to 40 C.F.R. § 75.20(b), Boiler Unit 6 should have been recertified by August, 2000 after the conversion from oil to gas was complete. Detroit failed to complete the recertification before Boiler Unit 6 was taken off-line in December, 2001.

26. Boiler Unit 6 is expected to be on-line again in December, 2004.

27. Pursuant to 40 C.F.R. §§ 75.70 and 75.4, the initial certification for GT-1 was due May 1, 2003.

28. Detroit has not completed the initial certification for GT-1.

29. Pursuant to 40 C.F.R. § 75.21 and Appendix B, Detroit was required to submit RATAs semiannually for Boiler Units 5 and 6 and GT-1.

30. Not all of the RATAs for Boiler Units 5 and 6 and GT-1 have been completed.

31. Pursuant to 40 C.F.R. § 75.64 Detroit was required to submit quarterly EDRs for Boiler Units 5 and 6 and GT-1.

32. Every quarter since at least the 4th quarter of 1998, the EDRs for Boiler Units 5 and 6 have been late, missing, in unacceptable, incompatible or unreadable format, or missing data (quality assurance and quality control testing).

33. On January 31, 1995, Detroit submitted a monitoring plan that did not have all of the elements required by 40 C.F.R. § 75.53(c).

34. On August 6, 2003, representatives from U.S. EPA, MDEQ and Detroit met to discuss the violations at the Mistersky Facility and steps that Detroit would take to achieve compliance with the Act.

Compliance Program

35. Within one year of the effective date of this Order, Detroit must achieve, demonstrate and maintain compliance with Subpart H of the Acid Rain Program for GT-1 at its Mistersky Facility.

36. Within one year of the effective date of this Order, Detroit must achieve, demonstrate and maintain compliance with

the Acid Rain Program for Boiler Unit 5 at its Mistersky Facility.

37. Within one year of the effective date of this Order, Detroit must achieve, demonstrate and maintain compliance with the Acid Rain Program for Boiler Unit 6 at its Mistersky Facility.

38. By May 31, 2004, Detroit must have successfully completed initial certification of GT-1 as required by 40 C.F.R. § 75.70.

39. By July 31, 2004, Detroit must have successfully completed initial certification of Boiler Unit 5 as set forth in 40 C.F.R. § 75.20.

40. By December 31, 2004, Detroit must have successfully completed initial certification of Boiler Unit 6 as set forth in 40 C.F.R. § 75.20.

41. Detroit must continue to submit a complete and up-to-date monitoring plan that has all of the elements required by 40 C.F.R. § 75.53.

42. Following initial certification of Boiler Units 5 and 6 and GT-1, Detroit must submit timely and complete RATAs as required by 40 C.F.R. § 75.21 and Appendix B for Boiler Units 5 and 6, and as required by 40 C.F.R. § 75.70 for GT-1.

43. Following initial certification of Boiler Units 5 and 6 and GT-1, Detroit must submit timely and complete EDRs as required by 40 C.F.R. § 75.64.

44. During the period in which this Order is effective, copies of the initial certifications for Boiler Units 5 and 6 and GT-1 must be sent to U.S. EPA, Region 5 at the same time that they are submitted to the U.S. EPA Clean Air Markets Division.

45. During the period in which this Order is effective, copies of the RATA and EDRs for Boiler Units 5 and 6 and GT-1 must be sent to U.S. EPA, Region 5 at the same time that they are submitted to the U.S. EPA Clean Air Markets Division.

46. Within one year of the effective date of this Order, Detroit must certify that the Mistersky Facility is in compliance with the Acid Rain Program.

47. Detroit must send all reports required by this Order to:

Attention: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604.

General Provisions

48. This Order does not affect Detroit's responsibility to comply with other local, state, and federal laws and regulations.

49. This Order does not restrict U.S. EPA's authority to enforce Section 111 of the Act, or any other section of the Act.

50. Nothing in this Order limits U.S. EPA's authority to seek appropriate relief, including penalties under Sections 113 of the Act, 42 U.S.C. § 7413, for Detroit's violation of the Acid Rain Program.

51. Failure to comply with this Order may subject Detroit to penalties under Section 113 of the Act, 42 U.S.C. § 7413, of up to \$27,500 per day for each violation, or up to \$32,500 for violations that occur after March 15, 2004.

52. The terms of this Order are binding on Detroit, its assignees and successors. Detroit must give notice of this Order to any successors in interest, prior to transferring ownership, and must simultaneously verify to U.S. EPA, at the above address, that Detroit has given the notice.

53. This Order is not subject to the Paperwork Reduction Act, 44 U.S.C. § 3501 et seq., because it seeks collection of information by an agency from specific individuals or entities as part of an administrative action or investigation.

54. U.S. EPA may use any information submitted under this Order in an administrative, civil or criminal action.

55. Detroit agrees to the terms of this Order.

56. This Order is effective on the date of signature by the Director of the Air and Radiation Division. This Order will expire one year from the effective date, if Detroit has complied with all of its terms.

3/22/2004
Date

A handwritten signature in black ink, appearing to read "Steve Rothblatt", written over a horizontal line.

Stephen Rothblatt, Director
Air and Radiation Division
U.S. EPA, Region 5

Enclosure

CERTIFICATE OF MAILING

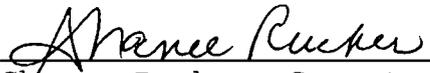
I, Shanee Rucker, certify that I sent the Administrative Order, EPA Order No. EPA-5-04-113(a) MI-04, by Certified Mail, Return Receipt Requested, to:

Jeffrey Jones, Esq.
City of Detroit Law Department
1650 First National Building
Detroit, Michigan 48226

I also certify that I sent a copy of the Administrative Order, EPA Order No. EPA-5-04-113(a) MI-04, First Class Mail to:

Teresa Seidel
District Supervisor
Detroit Office
Cadillac Place, Suite 2-300
3058 West Grand Blvd.
Detroit Michigan, MN 48202-6058

on the 24th day of March, 2004.


Shanee Rucker, Secretary
AECAS, (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: 70010320000615648122

standard bcc's: official file copy w/ attachment(s)

other bcc's:

Creation Date:	March 15, 2004
Filename:	G:\Air Enforcement And Compliance Branch\MI and WI\Land\mistao.wpd
Legend:	ARD:AECAB:AECAS(SECTION):TYPIST