

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

**IN THE MATTER OF:** )  
 )  
Aztec Peroxides, Inc. ) **NOTICE OF VIOLATION**  
Elyria, Ohio )  
 ) **EPA-5-01-OH-28**  
 )  
Proceedings Pursuant to )  
Section 113(a)(1) of the )  
Clean Air Act, 42 U.S.C. )  
§ 7413(a)(1) )

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**NOTICE OF VIOLATION**

The Administrator of the United States Environmental Protection Agency (U.S. EPA) is issuing this Notice of Violation under Section 113(a)(1) of the Clean Air Act (Act), 42 U.S.C. § 7413(a)(1). U.S. EPA finds that Aztec Peroxides, Inc. (Aztec) is violating the Ohio State Implementation Plan (SIP) and Part D of the Act, as follows:

**Statutory and Regulatory Background**

1. The Clean Air Act was enacted in 1970 (and amended in 1977 and 1990) to address the growing health and environmental problems caused by air pollution. Section 109 of the Act, 42 U.S.C. § 7409, required the Administrator of EPA to publish national ambient air quality standards ("NAAQS") for air pollutants. The NAAQS establish primary air quality standards to protect the public health and secondary standards to protect the public welfare.
2. The NAAQS include primary and secondary standards for, among other pollutants, ozone (including volatile organic compounds or organic compounds ["VOC" or "OC"]).
3. Under Section 107(b) of the Act, 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries where the air quality attains the NAAQS (attainment), fails to attain the NAAQS (nonattainment), or cannot be classified due to insufficient data (unclassifiable). The Administrator is required to promulgate a list of such areas (with modifications as the Administrator deems necessary) and their attainment status.
4. On March 3, 1978, U.S. EPA designated Lorain County, Ohio,

as a nonattainment area for the ozone NAAQS, as provided at 40 C.F.R. Part 81, Subpart C. 43 FR 8962.

5. The U.S. EPA did not redesignate Lorain County, Ohio, as an attainment area for the ozone NAAQS until May 7, 1996, as provided at 40 C.F.R. Part 81, Subpart C. 61 FR 20472.

#### State Implementation Plan

6. Section 110(a) of the Act, 42 U.S.C. § 7410, requires each state to submit to the Administrator for approval a plan that provides for the implementation, maintenance, and enforcement of the NAAQS in each air quality control region in the state. These plans are known as "State Implementation Plans" or "SIPs."
7. On June 10, 1982, U.S. EPA approved Ohio Administrative Code (OAC) Rule 3745-35, permit to operate provisions, as part of the federally enforceable Ohio SIP. 47 Fed. Reg. 25144.
8. Ohio SIP Rule OAC 3745-35-02(A) provides that no person may cause, permit, or allow the operation or other use of any air contaminant source without applying for and obtaining a permit to operate from the OEPA.
9. Ohio SIP Rule OAC 3745-35-01(B)(1) defines "air contaminant source" as "any machine, device, apparatus, equipment, building, or other physical facility that emits or may emit any air pollutant."

#### New Source Review

10. Part D of the Act, 42 U.S.C. §§ 7501-7515, set forth provisions for new source review of air quality in those areas designated as not attaining the NAAQS. These statutory provisions and regulations promulgated thereunder are known as the new source review ("NSR") program.
11. Section 172 of the Act, 42 U.S.C. § 7502, requires each state to submit, as part of its NSR program, SIP provisions that require permits for the construction and operation of new or modified major stationary sources anywhere in the nonattainment area.
12. On October 31, 1980, U.S. EPA conditionally approved Ohio's NSR SIP for nonattainment areas as meeting the requirements of Part D of the Act. 45 Fed. Reg. 72119. On September 8, 1993, U.S. EPA approved revisions to Ohio's NSR SIP for

nonattainment areas. 58 Fed. Reg. 47211. These SIP rules are codified at OAC 3745-31-01 through 3745-31-08.

13. Under the Act and Ohio SIP Rule OAC 3745-31-02(A), a person is prohibited from undertaking a major modification of an existing major stationary source in a nonattainment area without first obtaining an NSR permit to install from OEPA.
14. Ohio SIP Rule OAC 3745-31-05 states that the Director of OEPA shall not issue a permit to install unless he determines that it does not result in a violation of any applicable laws. Applicable laws include the Act and regulations of the EPA which incorporate the NSR provisions promulgated under the Act and set forth in 40 C.F.R. Part 51, Appendix S.
15. 40 C.F.R. Part 51, Appendix S, Section I. provides that a major new source or major modification, that would be located in an area designated in 40 C.F.R. 81.300, *et seq.*, as nonattainment for a pollutant for which the source or modification would be "major," may be allowed to construct only if the stringent conditions set forth (in this Appendix) are met.
16. 40 C.F.R. Part 51, Appendix S, Section IV. provides that if the reviewing authority finds that the major stationary source or major modification would be constructed in an area designated in 40 C.F.R. § 81.300, *et seq.*, as nonattainment for a pollutant for which the stationary source or modification is major, approval may be granted only if the following conditions are met:

*Condition 1:* The new source is required to meet an emission limitation which specifies the lowest achievable emission rate for such source.

*Condition 2:* The applicant must certify that all existing major sources owned or operated by the applicant in the same state as the proposed source are in compliance with all applicable emission limitations and standards under the Act.

*Condition 3:* Emission reductions (offsets) from existing sources in the area of the proposed source are required such that there will be reasonable progress toward attainment of the applicable NAAQs.

*Condition 4:* The emission offsets will provide a positive net air quality benefit in the affected area.

17. 40 C.F.R. Part 51, Appendix S, Section II.A.18. defines

"lowest achievable emission rate", for any source, as the more stringent rate of emissions based on the following:

- (i) the most stringent emission limitation which is contained in the implementation plan of any State for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable; or
- (ii) the most stringent emission limitation which is achieved in practice by such class or category of source.

In no event shall the application of this term permit a proposed new or modified source to emit any pollutant in excess of the amount allowable under any applicable new source standards of performance.

- 18. 40 C.F.R. Part 51, Appendix S, Section II.A.1. defines a "stationary source" as any building, structure, facility or installation which emits or may emit any air pollutant subject to regulation under the Act.
- 19. 40 C.F.R. Part 51, Appendix S, Section II.A.2. defines a "Building, structure, facility or installation", in relevant part, as all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel.
- 20. 40 C.F.R. Part 51, Appendix S, Section II.A.4.(i)(a) defines a "major stationary source" as any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Act.
- 21. 40 C.F.R. Part 51, Appendix S, Section II.A.3. defines "potential to emit", in relevant part, as the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable.
- 22. 40 C.F.R. Part 51, Appendix S, Section II.A.5.(i) defines a "major modification" as any physical change in or change in

the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act.

23. 40 C.F.R. Part 51, Appendix S, Section II.A.5.(ii) provides that any net emissions increase that is significant for VOC shall be considered significant for ozone.
24. 40 C.F.R. Part 51, Appendix S, Section II.A.6.(i)(a) defines "net emissions increase" as any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source.
25. 40 C.F.R. Part 51, Appendix S, Section II.A.13.(iii) provides that the Administrator may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit
26. 40 C.F.R. Part 51, Appendix S, Section II.A.13.(iv) provides that for any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.
27. 40 C.F.R. Part 51, Appendix S, Section II.A.10.(i) defines "significant", in reference to a net emissions increase or the potential of a source to emit a pollutant, as a rate of emission that would equal or exceed 40 tons of VOC per year.
28. Section 113(a) of the Act provides that where the Administrator of U.S. EPA finds that any person has violated or is in violation of any applicable implementation plan or permit, the Administrator, at any time after the expiration of 30 days following the date on which a notice of violation is issued, issue a compliance order, and administrative penalty order or bring a civil judicial action, as provided in Section 113(b).

#### **Factual Background and Findings**

29. Aztec owns and operates an organic peroxide production facility (Aztec's facility) at 555 Garden Street in Elyria, Ohio.
30. According to a letter submitted by Aztec to U.S. EPA on August 9, 2001, Aztec began constructing a pretreatment plant (Ohio EPA emission unit Z008) at its facility on or about May 23, 1989.

31. Emission unit Z008 is a "new source" as defined by Ohio SIP Rule OAC 3745-31-01(NN).
32. According to Ohio SIP Rule OAC 3745-31-02(A)(1), Aztec was required to apply for and obtain a permit to install from the OEPA prior to commencing construction of emission unit Z008.
33. Aztec did not submit an application for a permit to install emission unit Z008 to the OEPA until September 4, 1996.
34. Aztec did not obtain a permit to install for emission unit Z008 until November 6, 1996.
35. Emission unit Z008 is an "air contaminant source" as defined by Ohio SIP Rule OAC 3745-35-01(B)(1).
36. According to Ohio SIP Rule OAC 3745-35-02(A), Aztec was required to apply for and obtain a permit to operate from the OEPA prior to beginning the operation of emission unit Z008.
37. According to a letter submitted by Aztec to U.S. EPA on August 9, 2001, Aztec began operating emission unit Z008 on or about January 2, 1990.
38. Aztec has never applied for or obtained a permit to operate from the OEPA for emission unit Z008.
39. Aztec's facility is a "stationary source" as defined at 40 C.F.R. Part 51, Appendix S, Section II.A.1.
40. Aztec owns and operates several VOC emission units at its facility, including an organic peroxide production process unit located in Building 11 that is designated by the Ohio EPA as emission unit P006.
41. Aztec has owned and operated emission unit P006 in the same manner since 1969 or earlier.
42. There are no enforceable limitations on the operation or emissions from emission unit P006.
43. According to an August 10 and 11, 1994 emission test, emission unit P006 has the potential to emit more than 190 tons of VOCs per year.
44. Aztec's facility is a "major stationary source" as defined

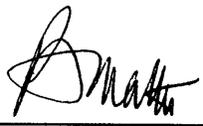
at 40 C.F.R. Part 51, Appendix S, Section II.A.4.(i)(a).

45. According to an application submitted by Aztec for a permit to install emission unit Z008, the emission unit has the potential to emit 63.7 tons of VOC per year.
46. The installation of emission unit Z008 was a "major modification" as defined at 40 C.F.R. Part 51, Appendix S, - Section II.A.5.(i).
47. At no time prior to the issuance of this Notice of Violation has Aztec applied for or obtained a permit meeting all of the conditions provided at 40 C.F.R. Part 51, Appendix S, Section IV.

**Violations**

48. By initiating the operation of emission unit Z008 without first applying for and obtaining a permit to operate from the OEPA, Aztec violated Ohio SIP Rule OAC 3745-35-02(A).
49. By commencing construction of emission unit Z008 without first applying for and obtaining a permit to install from the OEPA, Aztec violated Ohio SIP Rule OAC 3745-31-02(A) and the Act.
50. By commencing construction of emission unit Z008 without first meeting the NSR provisions at 40 C.F.R. Part 51, Appendix S, Section IV., Aztec violated the Ohio SIP and Part D of the Act.

9-26-01  
Date

  
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Bharat Mathur, Director  
Air and Radiation Division

**CERTIFICATE OF MAILING**

I, Loretta Shaffer, certify that I sent a Notice of Violation, No. EPA-5-01-OH-28, by Certified Mail, Return Receipt Requested, to:

James R. Swiezy, Plant Manager  
Aztec Peroxides, Inc.  
555 Garden Street  
Elyria, Ohio 44035

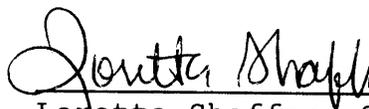
I also certify that I sent copies of the Notice of Violation by first class mail to:

Robert Hodanbosi, Chief  
Division of Air Pollution Control  
Ohio Environmental Protection Agency  
Lazarus Government Center  
P.O. Box 1049  
Columbus, Ohio 43216-1049

and

Dennis Bush, APC Supervisor  
Northeast District Office  
2110 E. Aurora Road  
Twinsburg, Ohio 44087

on the 27<sup>th</sup> day of September, 2001.



Loretta Shaffer, Secretary  
AECAS, (MN/OH)  
(312) 886-2402

CERTIFIED MAIL RECEIPT NUMBER: 70993400 0000 9581 5268