



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

REPLY TO THE ATTENTION OF

AE-17J

AUG 20 2004

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Fred L. Shusterich, President
Midwest Energy Resources Co.
P.O. Box 787,
Superior, Wisconsin 54880

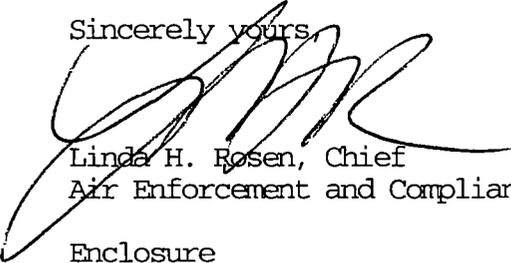
Re: Midwest Energy Resources Co.
Administrative Consent Order

Dear Mr. Shusterich:

Enclosed is an executed original of an Administrative Consent Order regarding the above captioned case.

If you have any questions about the Order, please contact me at
(312) 886-6810.

Sincerely yours,



Linda H. Rosen, Chief
Air Enforcement and Compliance Assurance Section MI/WI

Enclosure

cc: Thomas P. McElligott
Quarles & Brady
411 East Wisconsin Avenue
Milwaukee, Wisconsin 53202-4497

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)
)
Midwest Energy Resources Co.) **Administrative Consent Order**
Superior, Wisconsin, et al.)
) **EPA-5-04-113(a) WI- 4**
Proceeding Under Sections)
113(a)(1) and 114(a)(1) of)
the Clean Air Act, 42 U.S.C.)
§§ 7413(a)(1) and 7414(a)(1))

Administrative Consent 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 Midwest Energy Resources Company (MERC) under Sections 113(a)(1) and 114(a)(1) of the Clean Air Act (Act), 42 U.S.C. §§ 7413(a)(1) and 7414(a)(1).

Background

2. Each State must submit to the Administrator of U.S. EPA a plan for attaining and maintaining the National Ambient Air Quality Standards under Section 110 of the Act, 42 U.S.C. § 7410. These requirements are codified in the Wisconsin State Implementation Plan (SIP).

3. On January 18, 1995, U.S. EPA approved Wisconsin's Federally Enforceable State Operating Permits (FESOP) rule as part of Wisconsin's SIP, and in satisfaction of the requirements given in the Federal Register of June 28, 1989, for establishing FESOPs. 60 Fed. Reg. 3538.

4. On January 22, 1999, the Wisconsin Department of Natural Resources (WDNR) issued to MERC a FESOP, Permit #816013330-J03, to operate an existing coal transfer facility in Superior, Wisconsin (the Superior facility). The FESOP sets forth emission limits and monitoring, record keeping and reporting requirements.

5. Under Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1)(A), the Administrator of U.S. EPA may issue an order requiring compliance to any person who has violated or is violating the SIP. The Administrator has delegated this authority to the Director of the Air and Radiation Division.



6. On July 25, 2003, U.S. EPA issued to MERC a Notice of Violation (NOV). The NOV alleged that MERC violated, among other things, certain conditions of its FESOP related to the operation of its baghouses and scrubber.

7. On September 17, 2003 representatives of MERC and U.S. EPA held a conference to discuss the NOV. The parties have held subsequent discussions concerning this matter.

Compliance Program

8. Without admission of liability, MERC agrees to comply with the terms and conditions set forth below at the Superior facility.

9. MERC replaced the dumping station baghouses, identified in the WDNR FESOP permit #816013330-J03 issued to MERC on January 25, 1999 as C02 and C04 with a single new baghouse (C02). The new baghouse shall meet an exit particulate emission standard of 0.004 grains per dry standard cubic foot. Instrumentation to monitor pressure drop across the baghouses shall be installed and operated properly.

10. MERC has rebuilt and upgraded the coal transfer point baghouses, identified in the WDNR FESOP permit #816013330-J03 issued to MERC on January 25, 1999 as C21, C31, C41, C51 and C61. These baghouses shall meet an exit particulate emission standard of 0.004 grains per dry standard cubic foot. Instrumentation to monitor pressure drop has been installed and will be operated properly on each baghouse.

11. MERC shall operate the coal transfer point baghouses C21, C31, C41, C51 and C61 and the dumping station baghouse (C02) all year long at all times that the processes are in operation.

12. MERC shall apply a chemical surfactant, humectant, and binder to the coal at all times that coal is unloaded. This chemical will be added at the point identified by MERC as C05, and will be applied at the concentration and rate of application specified by the manufacturer. Application rates will be monitored every eight hours of operation or once each day, whichever yields the greater number of measurements. MERC shall apply this chemical surfactant, humectant, and binder for a period of two years from the date of initial application.

13. In order to determine the efficiency and the operating parameters at which its baghouses achieve the required outlet concentration, MERC has completed testing on these control devices. MERC shall submit the results of this testing in a report prepared by its testing firm to U.S. EPA no later than August 20, 2004.

14. MERC must send all information required by this order to:

Attention: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

General Provisions

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

16. This Order does not restrict U.S. EPA's authority to enforce the Wisconsin SIP, or any Section of the Act.

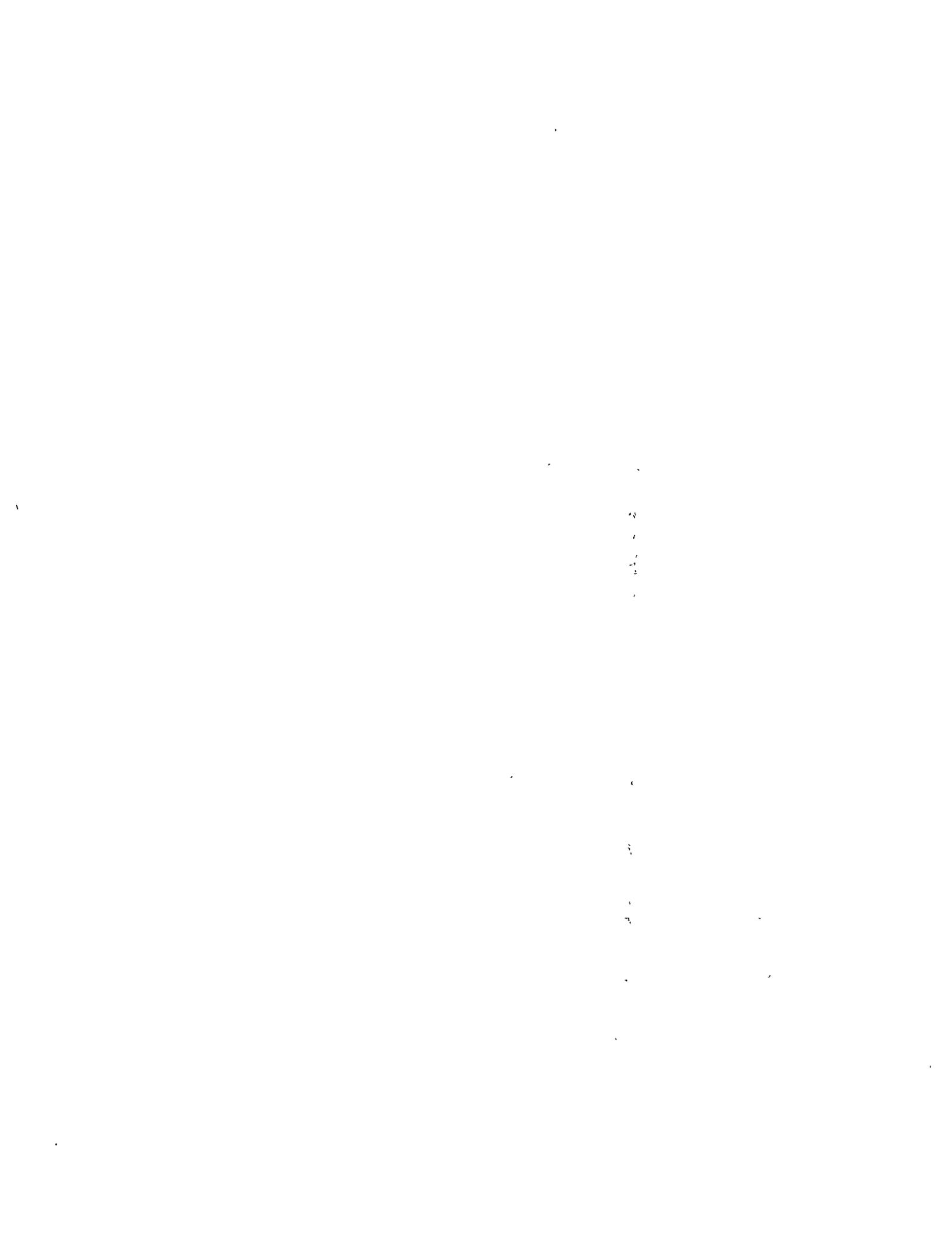
17. Nothing in this Order limits U.S. EPA's authority to seek appropriate relief, including penalties under Section 113 of the Act, 42 U.S.C. § 7413, for MERC's violation of the Wisconsin SIP.

18. Failure to comply with this Order may subject MERC to penalties of up to \$32,500 per day for each violation under Section 113 of the Act, 42 U.S.C. § 7413.

19. The terms of this Order are binding on MERC, its assignees and successors. MERC 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 address provided in paragraph 15, above, that MERC has given the notice.

20. This Order is not subject to the Paperwork Reduction Act, 55 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.

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



22. MERC agrees to the terms of this Order.

23. This Order is effective on the date of signature by the Director of the Air and Radiation Division. It shall terminate two years from that date, provided that MERC has complied with all terms of this Order throughout its duration.

Date July 23, 2004



Fred Shusterich, President
Midwest Energy Resources Company

Date 8/19/04



Stephen Rothblatt, Director
Air and Radiation Division

CERTIFICATION OF MAILING

I, Shanee Rucker, certify that I sent the executed original of the Administrative Consent Order, EPA Order No.

EPA-5-04-113(a)WI-4, by Certified Mail, Return Receipt Requested, to:

Mr. Fred L. Shusterich, President
Midwest Energy Resources Co.
P.O. Box 787
Superior, Wisconsin 54880

I also certify that I sent a copy of the executed original of the Administrative Consent Order, EPA Order No. EPA-5-04-113(a)WI-4, by First Class Mail to:

Thomas P. McElligott
Quarles & Brady
411 East Wisconsin Avenue
Milwaukee, Wisconsin 53202-4497

on the 20th day of August 2004.

Shanee Rucker
Shanee Rucker
Administrative Program Assistant
AECA MI/WI

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0006 158 6615