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

FEB 15 2005

REPLY TO THE ATTENTION OF

(AE-17J)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Rick Pucak, General Manager
Akron Thermal, L.P.
226 Opportunity Parkway
Akron, Ohio 44307

Re: Notice of Violation and Finding of Violation
Akron Thermal, L.P.
Akron, Ohio

Dear Mr. Pucak:

The United States Environmental Protection Agency (U.S. EPA) is issuing the enclosed Notice of Violation (NOV) and Finding of Violation (FOV) to Akron Thermal, L.P. (Akron Thermal) under Section 113(a)(1) and (a)(3) of the Clean Air Act, 42 U.S.C. § 7413(a)(1) and (a)(3). We find that you are violating the Prevention of Significant Deterioration requirements in Part C of the Clean Air Act, 42 U.S.C. §§ 7470-7479 and 42 U.S.C. §§ 7491-7492, Sections 502 and 503 of the Clean Air Act, 42 U.S.C. §§ 7661a-7661b, the Ohio State Implementation Plan, and the Federal Standards of Performance for Industrial-Commercial Steam Generating Units, 40 C.F.R. §§ 60.40b et seq. at your Akron, Ohio facility.

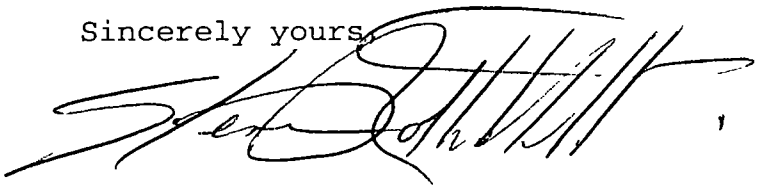
Section 113 of the Clean Air Act gives us several enforcement options. These options include issuing an administrative compliance order, issuing an administrative penalty order, and bringing a judicial civil or criminal action. The options we select may depend on, among other things, the length of time you take to achieve and demonstrate continuous compliance with the rules cited in the NOV/FOV.

We are offering you an opportunity to confer with us about the violations alleged in the NOV/FOV. The conference will give you an opportunity to present information on the specific findings of violation, any efforts you have taken to comply, and the steps you will take to prevent future violations.

Please plan for your facility's technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference if you choose.

The contacts in this matter are Nathan A. Frank P.E., Environmental Engineer, and Catherine Garypie, Associate Regional Counsel. You may call them at (312) 886-3850 and (312) 886-5825 respectively to request a conference. You should make the request as soon as possible, but no later than 10 calendar days after you receive this letter. We should hold any conference within 30 calendar days of your receipt of this letter.

Sincerely yours,



Stephen Rothblatt, Director
Air and Radiation Division

cc: Robert Hodanbosi, Chief
Ohio Environmental Protection Agency

Lynn Malcolm, Administrator
Akron Regional Air Quality Management District

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:	)	
	)	
Akron Thermal, L.P.	)	**NOTICE AND FINDING OF**
Akron, Ohio	)	**VIOLATION**
	)	
	)	EPA-5-05-OH-03
Proceedings Pursuant to	)	
Section 113(a)(1) and (a)(3)	)	
of the Clean Air Act, 42	)	
U.S.C. § 7413(a)(1) and	)	
(a)(3)	)	
	)	

NOTICE AND FINDING OF VIOLATION

The Administrator of the United States Environmental Protection Agency (U.S. EPA) is issuing this Notice of Violation and Finding of Violation under Section 113(a)(1) and (a)(3) of the Clean Air Act (CAA or the Act), 42 U.S.C. § 7413(a)(1) and (a)(3). U.S. EPA finds that Akron Thermal, L.P. (Akron Thermal) is violating the Federal New Source Performance Standards (NSPS) for Industrial-Commercial-Institutional Steam Generating Units, 40 C.F.R. §§ 60.40b et seq., Part C of the CAA, the Ohio State Implementation Plan (SIP), and Sections 502 and 503 of the CAA, 42 U.S.C. § 7661a-7661b, as follows:

Statutory and Regulatory Background

National Standards of Performance for Industrial-Commercial Steam Generating Units

1. Section 111(e) of the Act, 42 U.S.C. § 7411(e), provides that after the effective date of a standard of performance promulgated under Section 111, it is unlawful for any owner or operator of any new source to operate such source in violation of that standard.

2. Section 111(a)(2) of the Act, 42 U.S.C. § 7411(a)(2), defines the term "new source" as any stationary source, the construction or modification of which is commenced after the publication of regulations (or, if earlier, proposed regulations) prescribing a standard of performance under Section 111 which will be applicable to such source.

3. Construction or modification is "commenced" when an owner or operator of a stationary source undertakes "a continuous

program of construction or modification," or enters into a "contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or modification." 40 C.F.R. § 60.2.

4. Section 111(a)(4) of the Act, 42 U.S.C. § 7411(a)(4), defines "modification," in pertinent part, as "any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source . . ." This definition requires that the physical or operational change result in an increase in the emission rate to the atmosphere of any pollutant for which a standard applies. 40 C.F.R. §60.14(a). A net emission increase is calculated by comparing the hourly emission rate, at maximum physical capacity, before and after the physical or operational change. 40 C.F.R. §60.14(b).

5. A modified stationary source must comply with all applicable standards within 180 days from the completion of any physical or operational change. 40 C.F.R. § 60.14(g).

6. 40 C.F.R. §60.7 requires, in pertinent part, that any owner or operator subject to the provisions of Part 60 provide written notification of the date of construction, the date of start up, the date of any physical or operational change to a NSPS affected facility, and the start up date of any continuous monitoring systems.

7. 40 C.F.R. §60.8 states, in pertinent part, any owner or operator of an affected facility shall conduct a performance test(s) and furnish the Administrator a written report of the results within 60 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial start up.

8. U.S. EPA promulgated 40 C.F.R. Part 60 Subpart Db - Standards of Performance for Industrial-Commercial Steam Generating Units (40 C.F.R. §§ 60.40b - 60.49b) on December 16, 1987. 52 Fed. Reg. 47842 (December 16, 1987).

9. 40 C.F.R. § 60.40b(a) states that the affected facility to which Subpart Db applies is each steam generating unit that commences construction, modification, or reconstruction after June 19, 1984, and that has a heat input capacity from fuels combusted in the steam generating unit of greater than 29 MW (100 million Btu/hour).

10. 40 C.F.R. § 60.41b defines "steam generating unit" to mean a device that combusts any fuel or byproduct/waste to produce steam or to heat water or any other heat transfer medium.

11. 40 C.F.R. § 60.41b defines "spreader stoker steam generating unit" to mean a steam generating unit in which solid fuel is introduced to the combustion zone by a mechanism that throws the fuel onto a grate from above. Combustion takes place both in suspension and on the grate.

12. 40 C.F.R. § 60.41b defines "coal" to mean all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society of Testing and Materials in ASTM D388-77, 90, 91, 95, or 98a, Standard Specification for Classification of Coals by Rank, coal refuse, and petroleum coke. Coal-derived synthetic fuels, including but not limited to solvent refined coal, gasified coal, coal-oil mixtures, and coal-water mixtures, are also included in this definition.

13. 40 C.F.R. § 60.42b(a) provides that the owner or operator of a Subpart Db affected facility that combusts exclusively coal shall not cause to be discharged into the atmosphere any gases that contain sulfur dioxide (SO_2) in excess of 10 percent (0.10) of the potential sulfur dioxide emission rate (90 percent reduction) and that contain sulfur dioxide in excess of the emission limit determined by a specified formula, which for coal results in 520 ng/J (or 1.2 lb/million Btu) heat input.

14. 40 C.F.R. § 60.43b(a) and (f) provide that no owner or operator of a Subpart Db affected facility which combusts exclusively coal shall cause to be discharged into the atmosphere from that affected facility any gases that contain particulate matter (PM) in excess of 22 ng/J (0.051 lb/million Btu) heat input or 20 percent opacity (6-minute average), except for one 6-minute period per hour of not more than 27 percent opacity.

15. 40 C.F.R. § 60.44b(a) provides that no owner or operator of a Subpart Db affected facility that combusts only coal from a spreader stoker steam generating unit shall cause to be discharged into the atmosphere from that affected facility any gases that contain nitrogen oxides (NOx) (expressed as NO_2) in excess of 260 ng/J (0.60 lb/million Btu) heat input.

16. 40 C.F.R. § 60.47b requires the owner or operator of a

Subpart Db affected facility which is required to comply with 40 C.F.R. § 60.42b to install, calibrate, maintain, and operate a continuous monitoring system (CEMS) for measuring SO_2 and either oxygen (O_2) or carbon dioxide (CO_2) both at the inlet and outlet of the SO_2 control device and record the output of the systems. As an alternative to operating CEMS, an owner or operator may elect to determine the average sulfur dioxide emissions and percent reduction.

17. 40 C.F.R. § 60.48b(a) requires the owner or operator of a Subpart Db affected facility which is required to comply with the opacity standards in 40 C.F.R. § 60.43b(f) to install, calibrate, maintain, and operate a continuous opacity monitoring system (COMS) and record the output of the system.

18. 40 C.F.R. § 60.48b(b)(1) requires the owner or operator of a Subpart Db affected facility to install, calibrate, maintain, and operate a CEMS for measuring NOx to the atmosphere, and record the output of the system.

19. 40 C.F.R. § 60.49b requires the owner or operator of a Subpart Db affected facility to maintain certain records and make certain reports to the U.S. EPA.

Prevention of Significant Deterioration

20. On June 19, 1978, U.S. EPA promulgated the prevention of significant deterioration (PSD) of air quality standards pursuant to Subtitle I, Part C of the Act. 43 Fed. Reg. 26403 (June 19, 1978). The PSD regulations were revised on August 7, 1980 (45 Fed. Reg. 52676) in response to a decision of the U.S. Court of Appeals for the D.C. Circuit. These regulations are codified at 40 C.F.R. § 52.21 in the 1999 edition of the Code of Federal Regulations. Subsequent to 1980, the PSD regulations have been repeatedly revised.

21. The authority to implement the federal PSD regulations was delegated to the State of Ohio in a letter from U.S. EPA dated May 1, 1980 and thereby incorporated into the Ohio SIP. 40 C.F.R. § 52.1884 and 46 Fed. Reg. 9580 (January 29, 1981).

22. On October 10, 2001, U.S. EPA approved the Ohio SIP for PSD provisions for attainment areas. 66 Fed. Reg. 51570 (October 10, 2001). Ohio's PSD program is located in Ohio Administrative Code (OAC) 3745-31-01 through 3745-31-20. These rules mirror the federal PSD regulations codified in

40 C.F.R. §52.21 in the 1999 edition of the Code of Federal Regulations.

23. Facilities in Ohio were required to comply with the federal PSD program prior to October 10, 2001. Facilities in Ohio are required to comply with the Ohio PSD program on and after October 10, 2001. Revisions to the federal PSD program made on or after October 10, 2001 are not currently effective in Ohio.

24. 40 C.F.R. § 52.21(b)(1)(i)(a)(1999) defines a "major stationary source" as any stationary source within one of 28 source categories which emits, or has the potential to emit, 100 tons per year or more of any air pollutant subject to regulation under the Act. Stationary sources with fossil fuel boilers (or combinations thereof) totaling more than 250 million BTU per hour heat input are included among the 28 source categories.

25. 40 C.F.R. § 52.21(b)(2)(i)(1999) 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.

26. 40 C.F.R. § 52.21(b)(3)(i)(1999) defines "net emissions increase" as the amount by which the sum of the following exceeds zero:
(a) Any increase in actual emissions from a particular physical change or change in method of operation at a stationary source; and
(b) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

27. 40 C.F.R. § 52.21(b)(21)(1999) defines "actual emissions" and states that for any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit (PTE) of the unit on that date. 40 C.F.R. § 52.21(b)(21)(iv)(1999).

28. 40 C.F.R. § 52.21(b)(23)(1999) defines "significant" and states that in reference to NOx, SO_2, PM and carbon monoxide (CO), significant net emissions increase means an emissions rate that would equal or exceed 40 tons or more per year of NOx, 40 tons or more per year of SO_2, 25 tons or more per year of PM, and 100 tons or more per year of CO. 40 C.F.R. § 52.21(b)(23)(i)(1999).

29. An applicant for a permit to modify a stationary source is required to submit all information necessary to allow the permitting authority to perform any analysis or make any determination required in order to issue the appropriate permit. 40 C.F.R. § 52.21(n)(1999).

30. Any owner or operator of a source or modification subject to 40 C.F.R. § 52.21(1999) who commences construction after the effective date of the PSD regulations without applying for and receiving a PSD permit, shall be subject to appropriate enforcement action. 40 C.F.R. § 52.21(r)(1)(1999).

31. 40 C.F.R. § 52.21(i)(1999) prohibits the construction of any new major stationary source or any major modification without a permit which states that the source or modification would meet the requirements of 40 C.F.R. § 52.21(j) through (r)(1999). 40 C.F.R. § 52.21(j) through (r)(1999) require that a source subject to PSD regulations undergo a control technology review, install Best Available Control technology (BACT), and conduct air quality modeling.

Requirements for SIP Permits to Install

32. OAC 3745-31-02(A) states that no person shall cause, permit, or allow the installation of a new source of air pollutants or allow the modification of an air containment source without first obtaining a permit to install from the director.

33. OAC 3745-31-05 provides that the director shall issue a permit to install if he determines, among other things, that the modification will not result in a violations of applicable laws such as those in 3745-31-10 to 3745-31-20 containing requirements pertaining to installation of major modifications in attainment areas or NSPS.

Requirements for Title V Operating Permits

34. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), and 40 C.F.R. § 70.7(b) provide that, after the effective date of any permit program approved or promulgated under Title V of the CAA, no source subject to Title V may operate except in compliance with a Title V permit.

35. 40 C.F.R. § 70.1(b) provides that all sources subject to the Part 70 regulations shall have a permit to operate that assures compliance by the source with all applicable requirements.

36. 40 C.F.R. § 70.7(b) provides that no source subject to Part 70 requirements may operate without a permit issued under a Part 70 program.

37. U.S. EPA fully approved the Ohio Title V program, effective October 1, 1995. 60 Fed. Reg. 42045 (August 15, 1995). Ohio's Title V permit requirements are codified at OAC 3745-77.

38. OAC 3745-77-02(A) prohibits operation of a source subject to Title V permitting requirements without a permit issued under Chapter 3745-77. OAC 3745-77-02(A)(1) requires that each Title V permit shall include emission limits and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of issuance.

Akron Thermal's Facility

39. Akron Thermal operates a district steam heating plant at 226 Opportunity Parkway, Akron, Ohio. The City of Akron owns the plant and leases it to Akron Thermal. This plant consists of the Akron Recycle Energy Systems (RES) Facility and the former B.F. Goodrich powerhouse, also known as the Annex Facility, which is located directly across the Ohio and Erie Canal from the RES Facility.

40. Akron Thermal operates five boilers with a combined heat input of 1027 million Btu/hr at the district steam heating plant.

41. Included among these five boilers is Boiler #32 (OEPA I.D. no. B001), a 220 million BTU/hr heat input capacity spreader stoker coal fired boiler equipped with a multiclone and a two field electrostatic precipitator. Boiler #32 is located at the Annex Facility.

42. Boiler #32 meets the definition of "steam generating unit" in 40 C.F.R. § 60.41b and has a heat input capacity greater than 100 million BTU/hr.

43. Boiler #32 meets the definition of "spreader stoker steam generating unit" in 40 C.F.R. § 60.41b. Boiler #32 is fired with "coal" as defined in 40 C.F.R. § 60.41b.

44. Boiler #32 was shutdown in or about November 1988 by Akron Thermal's predecessor. This shutdown was intended to be

permanent.

45. After 1988, Akron Thermal's predecessor did not maintain Boiler #32 as necessary to keep it operational. As a result, it deteriorated to the point where it was inoperable.

46. In 1995, several estimates were prepared for reactivating Boiler #32. These estimates indicate that major work would be required to reactivate Boiler #32, taking several months to complete and costing several million dollars.

47. The City of Akron and Akron Thermal have entered into a series of agreements regarding the plant:
(a) August 4, 1995 Interim License and Operating Agreement granting Akron Thermal access to the Annex Facility and allowing Akron Thermal to conduct all work required to convert Boiler #32 to a coal-fired boiler.
(b) November 4, 1995 Addendum to the August 5, 1995 Interim License and Operating Agreement, granting Akron Thermal access to the RES Facility and allowing Akron Thermal to operate and maintain the RES Facility.
(c) August 15, 1997 Operating Lease Agreement under which Akron Thermal rents the RES Facility and the Annex Facility from the City of Akron, agrees to operate the plant, and is entitled to all revenues and profits from the plant.
(d) August 15, 1997 Asset Purchase Agreement under which Akron Thermal may elect to purchase and the City of Akron may elect to sell the plant.

48. Akron Thermal conducted a reactivation project on Boiler #32 between August 4, 1995 and November 4, 1995. Akron Thermal began operating Boiler #32 shortly thereafter.

49. As a result of the 1995 Boiler #32 reactivation project, the maximum emission rate of SO_2, PM, and NOx to the atmosphere from Boiler #32, expressed in kg/hr, increased.

50. As a result of the 1995 Boiler #32 reactivation project, the PTE of SO2, NOx, PM, and CO from Boiler #32 each increased from actual emissions of 0 tons per year in 1993 and 1994 to potential emissions of 6745.2 tons/yr, 441.3 tons/yr 32.2 tons/yr, and 200.6 tons/yr respectively. In addition, the district steam heating plant did not have any contemporaneous and creditable emission decreases at the time of the reactivation project.

51. The 1995 Boiler #32 reactivation project caused a

significant net emission increase of SO_2 and NOx greater than 40 tons per year, PM greater than 25 tons per year, and CO greater than 100 tons per year.

52. In 2001, Boiler #32 emitted 2,204.88 tons of SO_2, 275.11 tons of NOx, 25.52 tons of PM, and 125.05 tons of CO.

53. The district steam heating plant meets the definition of "major stationary source" in 40 C.F.R. § 52.21(b)(1)(i)(a), because it has fossil fuel boilers which have a combined heat input greater than 250 million BTU/hr and it has the potential to emit in excess of 100 tons of NOx, CO, and SO_2 per year.

54. Akron Thermal's facility is subject to the PSD regulations in the Ohio SIP, and the requirements to obtain PSD permits to install incorporating such PSD requirements, as required by the CAA and the Ohio SIP rules.

55. Akron Thermal's facility is subject to Title V of the CAA (Sections 502 and 503) because it is a major source (as defined in Section 501(2) of the CAA) with the potential to emit more than 100 tons of NOx, CO, and SO_2 per year.

56. The State of Ohio issued a Title V permit to Akron Thermal on February 4, 1999.

57. Boiler #32 is not equipped with the pollution control equipment necessary to comply with the NSPS SO_2 standards in 40 C.F.R. §§ 60.42b(a) and the NSPS NOx standards in 60.44b(a).

58. Boiler #32 is not equipped with a NOx or SO_2 CEMS nor is it equipped with a COMS.

Violations

59. The 1995 Boiler #32 reactivation project conducted by Akron Thermal triggered NSPS "modification" provisions in 40 C.F.R. §60.14. As a result, Boiler #32 is subject to 40 C.F.R. Part 60 Subpart Db.

60. Akron Thermal failed to notify U.S. EPA of the reactivation project, which resulted in modification of Boiler #32, in violation of 40 C.F.R. §60.7.

61. Akron Thermal failed to conduct a performance test on Boiler #32 within 180 days after the reactivation project and

furnish the U.S. EPA a written report of the results, in violation of 40 C.F.R. §60.8.

62. Akron Thermal has emitted, and continues to emit into the atmosphere, SO_2 in excess of 10 percent (0.10) of the potential sulfur dioxide emission rate (90 percent reduction) and that contain sulfur dioxide in excess of 520 ng/J (or 1.2 lb/million Btu) heat input from Boiler #32 in violation of 40 C.F.R. §60.42b(a).

63. Akron Thermal has emitted, and continues to emit into the atmosphere, NOx in excess of 260 ng/J (0.60 lb/million Btu) heat input from Boiler #32 in violation of 40 C.F.R. §60.44b(a).

64. Boiler #32 is not equipped with a properly installed, calibrated, maintained, and operated CEMS for measuring SO_2 and either O_2 or CO_2 in violation of 40 C.F.R. §60.47b.

65. Boiler #32 is not equipped with a properly installed, calibrated, maintained, and operated COMS in violation of 40 C.F.R. §60.48b(a).

66. Boiler #32 is not equipped with a properly installed, calibrated, maintained, and operated CEMS for measuring NOx in violation of 40 C.F.R. §60.48b(b)(1).

67. Akron Thermal has not maintained the necessary records or made the necessary reports to the U.S. EPA required by 40 C.F.R. § 60.49b.

68. The 1995 Boiler #32 reactivation project conducted by Akron Thermal caused emissions of SO_2, NOx, PM, and CO to increase above the significance level for each pollutant resulting in a "major modification" as defined in 40 C.F.R. §52.21(b)(2)(1999).

69. Akron Thermal failed to obtain a PSD permit or undergo PSD review, including applying BACT, prior to beginning actual construction, in violation of 40 C.F.R. Part 52(1999).

70. Akron Thermal failed to obtain a permit to install or undergo PSD review, including applying BACT, prior to allowing the modification without first obtaining a permit to install from the director, in violation of OAC Chapter 3745-31.

71. The violations noted in paragraphs 69-70 exist from at least

the date of start of construction and continue until the appropriate permits are obtained and the necessary pollution control equipment is installed and operated.

72. Akron Thermal failed to obtain a Title V permit that assures compliance with all applicable requirements of the CAA prior to operating a source subject to Title V permitting requirements, in violation of the Section 504 of the CAA and 40 C.F.R. § 70.1(b).

73. Akron Thermal failed to obtain a Title V permit that includes emission limits and standards, including those operational requirements and limitations that assure compliance with all applicable requirements, prior to operating a source subject to Title V permitting requirements in violation of OAC 3745-77-02(A)(1)

74. The violations noted in paragraphs 72-73 exist from at least November 4, 1995, the date on which construction was complete and operation of Boiler #37 began and continues until Akron Thermal obtains a Title V permit that assures compliance with all applicable requirements of the CAA.

2/15/2005
Date

Stephen Rothblatt, Director
Air and Radiation Division

CERTIFICATE OF MAILING

I, Loretta Shaffer, certify that I sent a Notice of Violation/Finding of Violation, No. EPA-5-05-OH-03, by Certified Mail, Return Receipt Requested, to:

Rick Pucak, General Manager
Akron Thermal, L.P.
226 Opportunity Parkway
Akron, Ohio 44307

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

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

and

Lynn Malcolm, Administrator
Akron Regional Air Quality Management District
146 South High St. Room 904
Akron, Ohio 44308

on the 15th day of Feb, 2005.

Loretta Shaffer

Loretta Shaffer, Secretary
AECAS, (MN/OH)

CERTIFIED MAIL RECEIPT NUMBER: 7001032000061558 4925