



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

AUG 19 2005

REPLY TO THE ATTENTION OF
(AE-17J)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

W.R. Chokran, Plant Manager
Royster-Clark AgriBusiness, Inc.
10743 Brower Road
North Bend, Ohio 45052

Re: Amended Notice of Violation and Finding of Violation
Royster-Clark AgriBusiness, Inc.
North Bend, Ohio

Dear Mr. Chokran:

The United States Environmental Protection Agency (U.S. EPA) is issuing the enclosed Amended Notice of Violation (NOV) and Finding of Violation (FOV) to Royster-Clark AgriBusiness, Inc. (Royster-Clark) under Section 113(a)(1) and (a)(3) of the Clean Air Act, 42 U.S.C. § 7413(a)(1) and (a)(3). This Amended NOV/FOV restates the NOV/FOV issued to Royster-Clark Nitrogen on July 29, 2004. This NOV/FOV has been amended to show Royster-Clark AgriBusiness, Inc. as the owner/operator of the North Bend Plant and provide Royster-Clark AgriBusiness, Inc. with proper notice under the Clean Air Act.

We find that you are violating Prevention of Significant Deterioration requirements in Part C of the Clean Air Act, 42 U.S.C. §§ 7470-7479, 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 Nitric Acid Plants, 40 C.F.R. §§ 60.70 et seq. promulgated pursuant to Section 111 of the Clean Air Act, 42 U.S.C. § 7411 at your North Bend, Ohio facility.

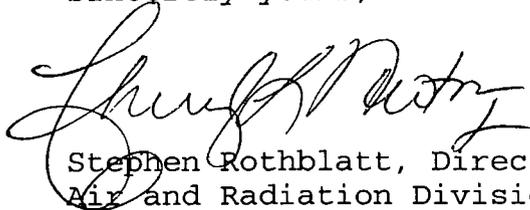
Section 113 of the Clean Air Act gives us several enforcement options. These options include issuing an administrative compliance order, issuing an administrative penalty order, and bringing a judicial civil or criminal action. The options we select may depend on, among other things, the length of time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

We are offering you an opportunity to confer with us about the violations alleged in the Amended 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 Joanna Glowacki, Associate Regional Counsel. You may call them at (312) 886-3850 and (312) 353-3757 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

Cory Chadwick, Director
Hamilton County
Department of Environmental Services

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)
)
Royster-Clark AgriBusiness,) **AMENDED NOTICE AND FINDING OF**
Inc.) **VIOLATION**
North Bend, Ohio)
) EPA-5-05-OH-20
)
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 Amended 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). This notice amends the Notice of Violation and Finding of Violation issued on July 29, 2004 to Royster-Clark Nitrogen, Inc., to show Royster-Clark AgriBusiness, Inc. as the owner and operator of the subject facility. U.S. EPA finds that Royster-Clark AgriBusiness, Inc. (Royster-Clark) is violating Part C of the CAA and the Ohio State Implementation Plan (SIP), the Federal New Source Performance Standards (NSPS) for Nitric Acid Plants, 40 C.F.R. §§ 60.70 et seq. 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 Nitric Acid Plants

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 this section, 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 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 emission 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.
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, and the date of any physical or operational change to a NSPS affected facility.
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 proposed the NSPS for nitric acid plants on August 17, 1971. 36 Fed. Reg. 15704. U.S. EPA promulgated the NSPS for nitric acid plants, Subpart G, on December 23, 1971. 36 Fed. Reg. 24881.
9. 40 C.F.R. § 60.71 defines a nitric acid production unit to mean any facility producing weak nitric acid by either the pressure or atmospheric pressure process.
10. The Nitric Acid Plant NSPS, Subpart G, at 40 C.F.R. §

60.72(a), provides that, on or after the date of which the performance test required to be conducted by §60.8 is completed, no owner or operator of any nitric acid production unit shall cause to be discharged into the atmosphere from any affected facility any gases which: (1) Contain nitrogen oxides, expressed as NO₂, in excess of 1.5 kilograms per metric ton of acid produced (kg/ton) (3.0 pounds per ton of acid produced (lbs/ton)), the production being expressed as 100 percent nitric acid; (2) Exhibit 10 percent opacity or greater.

11. The Nitric Acid Plant NSPS at 40 C.F.R. § 60.73(a) requires that the source owner or operator install, calibrate, maintain, and operate a continuous monitoring system (CEMS) for measuring nitrogen oxides (NO_x). 40 C.F.R. § 60.73(c) requires that the owner operator record the daily production rate and hours of operation.

Prevention of Significant Deterioration

12. On June 19, 1978, U.S. EPA promulgated the prevention of significant deterioration (PSD) of air quality standards pursuant to Title I, Part C of the Act. The PSD regulations were revised on August 1, 1980 (45 Fed. Reg. 52676). These regulations are codified at 40 C.F.R. § 52.21 (43 Fed. Reg. 26403).
13. Part C of Title I of the Act and the PSD regulations implementing Part C, at 40 C.F.R. § 52.21, prohibit a major stationary source from constructing a modification without first obtaining a PSD permit, if the modification is major in that it will result in a significant net increase in emissions of a regulated pollutant, and if the source is located in an area which has achieved the National Ambient Air Quality Standards (NAAQS) for that pollutant. Part C and its implementing regulations further require that a source subject to PSD regulations install Best Available Control technology (BACT). 40 C.F.R. § 52.21(j).
14. 40 C.F.R. § 52.21(b)(1)(i)(a) 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. Nitric acid plants are included among the 28 source categories.
15. 40 C.F.R. § 52.21(b)(2)(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.

16. 40 C.F.R. § 52.21(b)(3)(i) 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."
17. In reference to nitrogen oxides (NO_x), significant net emissions increase means an emissions rate of 40 tons or more per year of NO_x. 40 C.F.R. § 52.21(b)(23)(i).
18. An applicant for a permit to modify a stationary source is required to provide all relevant information to allow the permitting authority to perform an analysis or make the determination required in order to issue the appropriate permit. 40 C.F.R. § 52.21(n).
19. The PSD regulations were incorporated into the Ohio SIP on August 7, 1980. 40 C.F.R. § 52.738 (45 Fed. Reg. 52741, August 7, 1980, as amended at 46 Fed. Reg. 9584, January 29, 1981).
20. On October 10, 2001, Ohio received approval for a SIP approved PSD program (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.

Requirements for SIP Permits to Install

21. Section 110 of the Act, 42 U.S.C. § 7410, requires each state to adopt and submit to U.S. EPA for approval a State Implementation Plan (SIP) that provides for the maintenance, implementation and enforcement of the NAAQS. Under Section 110(a)(2) of the Act, 42 U.S.C. § 7410(a)(2), each SIP must include a permit program to regulate the modification and construction of any stationary source of air pollution as necessary to assure that NAAQS are achieved. Pursuant to Section 113(a) and (b) of the Act, 42 U.S.C. § 7413(a) and (b), upon EPA approval, SIP requirements are federally enforceable under Section 113. 40 C.F.R. § 52.23.

22. U.S. EPA originally approved OAC 3745-31 as part of the federally enforceable Ohio SIP on October 31, 1980 (45 Fed. Reg. 72119). This approval included OAC Rule 3745-31-02. On September 8, 1993, U.S. EPA approved revisions to OAC 3745-31 into the federally enforceable SIP (58 Fed. Reg. 47211).
23. OAC Rule 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.
24. At times relevant to this FOF/NOV, "Modification" was defined by the Ohio SIP general permit requirements as, among other things, any physical change in, or change in the method of operation of a source of air pollutants that increases the amount of air pollutants emitted (OAC 3745-31-01(E) (October 31, 1980)). In 1993, the definition was changed to any physical change in or change in the method of operation of a source of air pollutants that increases the allowable air contaminant emissions under applicable law. OAC 3745-31-01(E) (September 8, 1993).

Requirements for Title V Operating Permits

25. Title V of the Act, 42 U.S.C. §§ 7661-7661f, establishes an operating permit program for certain sources, including "major sources." The purpose of Title V is to ensure that all "applicable requirements" for compliance with the Act, including PSD and NSPS requirements, are collected in one place.
26. U.S. EPA promulgated final approval of the Ohio Title V program on August 15, 1995, with it becoming effective on October 1, 1995. Ohio's Title V permit requirements are codified at Ohio Administrative Code ("OAC") 3745-77 et. seq.
27. Section 502(a) of the Act, 42 U.S.C. § 7661a(a), and its implementing regulations at 40 C.F.R. Part 70, as well as the Ohio Title V permit requirements, have at all relevant times made it unlawful for any person to violate any requirement of a permit issued under Title V or to operate a "major source" except in compliance with a permit issued by a permitting authority under Title V. 40 C.F.R. § 70.1(b); OAC 3745-77-02(A).

28. "Major source" is defined in Section 501 of the CAA, 42 U.S.C. § 7661, in 40 C.F.R. § 70.2, and in OAC 3745-77-01(W) as, among other things, any source which directly emits or has the potential to emit of 100 tons or more per year of any regulated air pollutant. NOx is listed as a regulated air pollutant under 40 C.F.R. § 70.2 and OAC 3745-77-01(DD)(1).
29. Section 504(a) of the Act, 42 U.S.C. § 7661c(a), 40 C.F.R. § 70.6a, and OAC 3745-77-07 have at all relevant times required that each Title V permit include, among other things, enforceable emission limitations and such other conditions as are necessary to assure compliance with "applicable requirements" of the CAA and the requirements of the applicable SIP. "Applicable requirements" include any applicable PSD requirements and any applicable NSPS requirements. 40 C.F.R. § 70.2 and OAC 3745-77-01(H).
30. Section 503 of the CAA, 42 U.S.C. § 7661b, and 40 C.F.R. § 70.5(b) and OAC 3745-77-03 require any owner or operator of a source subject to Title V permitting requirements to submit a timely and complete permit application which, among other things, contains information sufficient to determine the applicability of any applicable requirements (including any requirement to meet BACT pursuant to PSD and to comply with NSPS), certifies compliance with all applicable requirements, provides information that may be necessary to determine the applicability of other applicable requirements of the CAA and contains a compliance plan for all applicable requirements for which the source is not in compliance.
31. 40 C.F.R. § 70.5(b) and OAC 3745-77-03(F) each requires that any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application to promptly submit such supplementary facts or corrected information upon becoming aware of such failure or incorrect submittal.

Royster-Clark's Facility

32. Royster-Clark owns and operates a nitric acid plant at 10743 Brower Road, North Bend, Ohio, 45052 (North Bend facility).
33. Royster-Clark's North Bend facility meets the definition of "nitric acid production unit" in 40 C.F.R. § 60.71.
34. Royster-Clark's North Bend facility meets the definition of "major stationary source" in 40 C.F.R. § 52.21(b)(1)(i)(a),

because it is a nitric acid plant that has the potential to emit in excess of 100 tons of NO_x per year.

35. On or about 1990, a heat train revision was performed on the nitric acid plant. This involved redesigning and replacing the plant's heat train. At this time, the air preheater, ammonia converter, turbine gas heater, steam superheater, ammonia/air mixer, tailgas heater, ammonia vaporizer, boiler feedwater economizer, stage 1 boiler, stage 2 boiler, and steam drum were replaced.
36. Subsequent to the heat train revision project, the following activities were performed on the nitric acid plant:
 - 1991 Modification to Secondary Absorber
 - 1992 Tail Gas Preheater upgrade
 - 1992 Cooler Condenser upgrade
 - 1994 Platinum Filter upgrade
 - 1994 Air compressor filters installation
 - 1996 Expander Turbine Upgrade
 - 1996 Compressor train intercoolers replacement
37. The activities discussed in paragraphs 35 and 36 above, in aggregate, increased the 100% nitric acid production capacity of the nitric acid plant from 230 tons per day in 1989 to 304 tons per day by 2002. As a result of this capacity increase, the emission rate of NO_x to the atmosphere from the nitric acid plant, expressed in kg/hr, increased.
38. As a result of this capacity increase, the emissions of NO_x from the nitric acid plant increased from 134 tons per year (average) in 1988 and 1989 to 217 tons per year in 2002. This demonstrates increases in emissions of 83.5 tons of NO_x per year, greater than 40 tons per year.
39. Royster-Clark operates a 7,000,000 gallon anhydrous ammonia storage tank equipped with a flare which is used intermittently to regulate pressure inside of the tank.
40. When the ammonia flare is in operation, it causes the emission of NO_x into the atmosphere.
41. Royster-Clark's North Bend 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 NO_x per year. Royster-Clark became subject to the requirements of Title V on November

30, 1995.

42. On February 21, 1996, Royster-Clark, then known as Vigoro Industries, Inc., submitted its Title V permit application to the Ohio Environmental Protection Agency. This permit application contained no information regarding the activities described in Paragraphs 35 and 36, nor did it contain any information regarding the emission of NOx from the ammonia flare. Additionally, the permit application stated that the nitric acid plant had never been modified as defined in OAC 3745-31-01.
43. After submission of its Title V permit application, Royster-Clark did not submit any supplementary information regarding the activities described in Paragraphs 35 and 36 or the emissions of NOx from the ammonia flare.
44. Based on the information contained in the Title V permit application submitted on February 21, 1996, the Ohio Environmental Protection Agency issued a Title V permit to the North Bend facility on August 15, 2001.
45. As of the date of this FOV/NOV, Royster-Clark is operating its facility in North Bend.
46. As a major source, Royster-Clark's North Bend 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.
47. The nitric acid plant was shown to be emitting 4.4 lbs of NOx per ton of 100% nitric acid produced during an April 23 and 24, 1991 emissions test. This is greater than the NSPS standard, in 40 C.F.R. §60.72(a), of 3.0 lbs of NOx per ton of 100% nitric acid produced.
48. Royster-Clark's nitric acid plant is not equipped with a NOx CEMS that has been certified in accordance with Performance Specification 2 in 40 C.F.R. Part 60 Appendix B.

Violations

National Standards of Performance for Nitric Acid Plants

49. The activities described in paragraphs 35 and 36 triggered NSPS "modification" provisions in 40 C.F.R. §60.14. As a result, Royster-Clark's facility is subject to 40 C.F.R.

Part 60 Subpart G.

50. Royster-Clark, then known as Vigoro Industries, Inc. failed to notify U.S. EPA of the activities described in Paragraphs 35 and 36, which resulted in modification of its facility, in violation of 40 C.F.R. §60.7.
51. Royster-Clark, then known as Vigoro Industries, Inc., failed to conduct a performance test of its nitric acid plant within 180 days after the activities described in Paragraphs 35 and 36 and furnish U.S. EPA a written report of the results, in violation of 40 C.F.R. §60.8.
52. Since at least August 18, 2000, Royster-Clark has emitted, and continues to emit into the atmosphere, NO_x in excess of 1.5 kilograms per metric ton of acid produced (kg/ton) (3.0 lbs/ton) from its nitric acid plant, in violation of 40 C.F.R. §60.72(a).
53. Royster-Clark's nitric acid plant is not equipped with a properly installed, calibrated, and maintained continuous emission monitor which meets Performance Specification 2 in 40 C.F.R. Part 60 Appendix B, in violation of 40 C.F.R. § 60.73(a).

Prevention of Significant Deterioration

54. The activities described in Paragraphs 35 and 36 caused emissions of NO_x to increase above the significance level resulting in a "major modification" as defined in 40 C.F.R. § 52.21(b)(2).
55. Royster-Clark, then known as Vigoro Industries Inc., violated Section 165(a) and 167 of the CAA, 42 U.S.C. §§ 7475(a) and 7477 and the PSD regulations set forth in 40 C.F.R. § 52.21 and then incorporated into the Ohio SIP, by undertaking such major modification and operating its facility after the modification without obtaining a PSD permit as required by 40 C.F.R. § 52.21(i) and (r). In addition, Royster-Clark has not installed and operated BACT for control of NO_x as required by 40 C.F.R. § 52.21(j).
56. Royster-Clark, then known as Vigoro Industries Inc., failed to provide the permitting authorities with all relevant information necessary to perform an analysis of whether the proposed activities described in Paragraphs 35 and 36 were a "major modification," in violation of the PSD regulations set forth in 40 C.F.R. § 52.21(n) and then incorporated into

the Ohio SIP.

Requirements for SIP Permits to Install

57. The activities described in Paragraphs 35 and 36 constituted a modification under the OAC Rule 3745-31-02(A). Royster-Clark, then known as Vigoro Industries Inc., undertook the activities described in Paragraphs 35 and 36, which constituted a modification, without first obtaining a permit to install from the director of the Ohio EPA, in violation of OAC Chapter 3745-31.
58. The violations noted in Paragraphs 54 through 57 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.

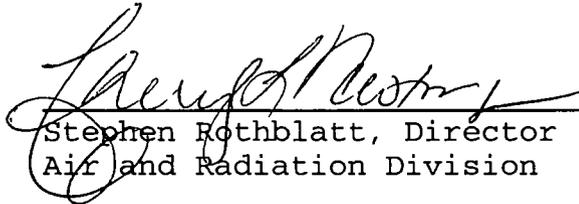
Requirements for Title V Operating Permits

59. As set forth in paragraphs 35 and 36 above, Royster-Clark commenced a major modification at the North Bend nitric acid plant, as defined under the PSD regulations in the Ohio SIP. As a result, this modification triggered the requirement to, *inter alia*, undergo a new BACT determination, to obtain a PSD permit establishing emissions limitations that meet BACT pursuant to such a determination, and to operate in compliance with such limitations. Royster-Clark failed to satisfy these requirements.
60. Subsequently, Royster-Clark failed to submit a complete application for a Title V operating permit for the North Bend nitric acid plant that identified all applicable requirements, that accurately certified compliance with such requirements, and that contained a compliance plan for all applicable requirements for which the source was not in compliance (including information pertaining to the activities described in paragraphs 35 and 36, the requirement to meet BACT pursuant to a new BACT determination under PSD and the emission of NOx from the ammonia flare) in violation of Section 503 of the Act, 42 U.S.C. § 7661b, 40 C.F.R. § 70.5(a) and OAC 3745-77-03.
61. Thereafter, Royster-Clark failed to supplement and/or correct its February 21, 1996 Title V permit application with supplementary facts and corrected information regarding the activities described in Paragraphs 35 and 36, the requirement to meet BACT pursuant to a new BACT determination under PSD and the emission of NOx from the

ammonia flare in violation of 40 C.F.R. § 70.5(b) and OAC 3745-77-03(F).

62. As a result of its failure to provide complete information in its Title V application or to properly supplement its application, Royster-Clark failed to obtain a proper or adequate Title V operating permit for the North Bend nitric acid plant that contained emission limitations for NO_x, that met BACT pursuant to a new BACT determination, that met NSPS emission limits, and that contained emission limits for the ammonia flare. Royster-Clark thereafter operated the North Bend nitric acid plant without meeting such limitations and without having a valid operating permit that required compliance with such limitations or that contained a compliance plan for all applicable requirements for which the North Bend nitric acid plant was not in compliance. Royster-Clark's conduct violated Sections 502(a) of the Act, 42 U.S.C. §§ 7661a(a), 40 C.F.R. § 70.1(b) and OAC 3745-77-02.
63. The violation noted in Paragraphs 59 through 62 will continue until Royster-Clark obtains a Title V permit that assures compliance with all applicable requirements of the CAA.

8/19/05
Date



Stephen Rothblatt, Director
Air and Radiation Division

CERTIFICATE OF MAILING

I, Loretta Shaffer, certify that I sent a Amended Notice of Violation/Finding of Violation, No. EPA-5-05-OH-20, by Certified Mail, Return Receipt Requested, to:

W.R. Chokran, Plant Manager
Royster-Clark AgriBusiness, Inc.
10743 Brower Road
North Bend, Ohio 45052

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

Cory Chadwick, Director
Department of Environmental Services
Air Quality Programs
250 William Howard Taft Road
Cincinnati, Ohio 45219-2660

on the 19th day of August, 2005.


Loretta Shaffer, Secretary
AECAS, (MN/OH)
(312) 353-5723

CERTIFIED MAIL RECEIPT NUMBER: 70010320000614478768