UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Office of Enforcement and Compliance Assurance

IN THE MATTER OF:	)	
FIRSTENERGY CORPORATION, OHIO	)	**Notice of Violation**
EDISON COMPANY, PENNSYLVANIA	)	**EPA-[EPA-CAA-2000-HQ-001]**
POWER COMPANY	)	
	)	
	)	
Proceedings Pursuant to Section 113(a)(1)	)	
of the Clean Air Act, 42 U.S.C.	)	
§7413(a)(1)	)	
	)	

NOTICE OF VIOLATION

This Notice of Violation ("Notice") is issued to FirstEnergy Corporation ("FirstEnergy"), Ohio Edison Company ("Ohio Edison") and Pennnsylvania Power Company ("PennPower"), for violations of the Clean Air Act ("Act") at the coal-fired power plant identified below. FirstEnergy, Ohio Edison and PennPower have embarked on a program of modifications intended to extend the useful life, regain lost generating capacity, and/or increase capacity at their coal-fired power plants.

Commencing at various times since 1977 and continuing to today, FirstEnergy and its subsidiary operating companies have modified and operated the coal-fired power plant identified below without obtaining New Source Review ("NSR") permits authorizing the construction and operation of physical modifications of their boiler units as required by the State Implementation Plans ("SIP") of the State of Ohio. In addition, for each of these physical modifications at these power plants, FirstEnergy and its subsidiary operating companies have operated these modifications without installing pollution control equipment required by the Act. These violations of the SIP of Ohio have resulted in the release of massive amounts of Sulfur Dioxides ("SO_2"), Nitrogen Oxides ("NO_X"), and Particulate Matter ("PM") into the environment. Until these violations are corrected, FirstEnergy and its subsidiaries will continue to release massive amounts of illegal SO_2, NO_x, and PM into the environment.

This Notice is issued pursuant to Section 113(a)(1) of the Act, as amended, 42 U.S.C. §§ 7401-7671q. Section 113(a) of the Act requires the Administrator of the United States Environmental Protection Agency ("EPA") to notify any person in violation of a state implementation plan or permit of the violations. The authority to issue this Notice has been delegated to the Director, Air Enforcement Division, EPA Office of Enforcement and Compliance Assurance.

STATUTORY AND REGULATORY BACKGROUND

1. When the Clean Air Act (Act) was passed, Congress exempted existing facilities from many of its requirements. However, Congress also made it quite clear that this exemption would not last forever. As the United States Court of Appeals for the D.C. Circuit explained in Alabama Power v. Costle, 636 F.2d 323 (D.C. Cir. 1979), "the statutory scheme intends to 'grandfather' existing industries; but...this is not to constitute a perpetual immunity from all standards under the PSD program." Rather, the Act requires grandfathered facilities to install modern pollution control devices whenever the unit is proposed to be modified in such a way that its emissions may increase.

2. The NSR provisions of Parts C and D of Title I of the Clean Air Act require preconstruction review and permitting for modifications of stationary sources. Pursuant to applicable regulations, if a major stationary source is planning upon making a major modification, then that source must obtain either a PSD permit or a nonattainment NSR permit, depending on whether the source is located in an attainment or a nonattainment area for the pollutant being increased above the significance level. If a major stationary source is planning upon making a modification that is not major, it must obtain a general, or "minor" NSR permit regardless of its location. To obtain the required permit, the source must agree to put on Best Available Control Technology ("BACT") for an attainment pollutant or achieve Lowest Achievable Emission Role ("LAER") in a nonattainment area, or, in the case of a modification that is not major, must meet the emission limit called for under the applicable minor NSR program.

3. Pursuant to Part C of the Act, the SIP of Ohio requires that no construction or operation of a major modification of a major stationary source occur in an area designated as attainment without first obtaining a permit under 40 C.F.R. § 52.21(i) as incorporated into the Ohio SIP at 40 C.F.R. § 52.1884.

4. Pursuant to Part D of the Act, the SIP of Ohio requires that no construction or operation of a major modification of a major stationary source occur in an area designated as nonattainment without first obtaining a permit under Ohio Administrative Code ("OAC") 3745-31, approved October 31, 1980 (45 Fed. Reg. 72119) and September 8, 1993 (53 Fed. Reg. 47211).

5. Pursuant to the OAC 3745-31, "no person shall cause, permit, or allow the installation of a new source of air pollutants or...permit or allow modification of any source of air pollutants...without first applying for and obtaining a Permit to Install" from the Ohio EPA.

6. The SIP provisions identified in paragraph 3, 4 and 5 above are all federally enforceable pursuant to Sections 110 and 113 of the Act, 42 U.S.C. §§ 7410 and 7413.

FACTUAL BACKGROUND

7. FirstEnergy, Ohio Edison, and PennPower are owners and/or operators of the facility that is the subject of this Notice.

8. Ohio Edison operates the W.H. Sammis plant, a fossil fuel-fired electric utility steam generating plant located in or near Stratton, Ohio, Jefferson County. PennPower has an approximately 20.8 percent ownership interest in Sammis Unit 7. The plant consists of seven boiler units with 2,200 megawatts total generating capacity. Units 1 through 7 began operations in 1959, 1960, 1961, 1962, 1967, 1969 and 1971, respectively.

9. The W.H. Sammis plant is located in an area that has the following attainment/nonattainment classifications from 1980 to the present:

   - Jefferson County, Saline Township, has been in attainment for NO_2 from 1980 to the present. However, Jefferson County, Saline Township was nonattainment for ozone from 1990 until March 10, 1995. Thereafter, Jefferson County, Saline Township, has been in attainment for ozone.

   - Jefferson County, Saline Township, was in attainment for SO_2 from 1980 until the present.

   - Jefferson County, Saline Township, has been in attainment for PM since 1990.

10. The W.H. Sammis plant, identified in paragraph 8 above emits or has the potential to emit at least 100 tons per year of NO_x, SO_2 and/or PM and is a major stationary source under the Act.

VIOLATIONS

11. On numerous occasions between 1979 and the date of this Notice, Ohio Edison made "modifications" to the W.H. Sammis plant as defined by 40 C.F.R. 52.21(b)(2)(I) and OAC 3745-31. These modifications included, but are not limited to, the following individual modifications or projects: (1) replacement of reheater, furnace ash hopper boiler tubes, and secondary superheater outlet header of Unit 1 in 1993; (2) replacement of reheater, furnace ash hopper boiler tubes, and secondary superheater outlet header of Unit 2 in 1991; (3) replacement of reheater, furnace ash hopper boiler tubes, secondary superheater outlet header, front wall south cell boiler tubes, radiant downflow tubes, and furnace sidewall tubes of Unit 3 in 1992; (4) replacement of furnace ash hopper boiler tubes, waterwall tubes, superheater third pass outlet header, and superheater control condenser tubes of Unit 4 in 1990; (5) replacement of economizer, secondary superheater outlet pendant, and reheater outlet bank of Unit 5 in 1990; (6) replacement of the vertical tube furnace with a spiral tube furnace of Unit 5 in 1984; (7) replacement of horizontal reheater and economizer of Unit 6 in 1987; (8) replacement of burners, front and rear waterwall tubes, reheater riser and pendant tubes, first through third pass mix area walls,

and coal pulverizer pipes of Unit 6 in 1992; (9) replacement of the first and second waterwalls of Unit 6 in 1994; (10) replacement of coal pulverizers of Unit 6 in 1998; (11) replacement of the economizer, horizontal reheater, reheater riser tubes, turbine rotors, and front ash hopper tubes of Unit 7 in 1989; (12) replacement of waterwall panels of Unit 7 in 1991; (13) replacement of first and second furnace waterwalls of Unit 7 in 1993; and (14) replacement of first and second pass furnace waterwalls and front third pass waterwall tubes of Unit 7 in 1994.

12. For each of the modifications that occurred at the W.H. Sammis plant, neither FirstEnergy, Ohio Edison or PennPower obtained a PSD permit pursuant to 40 C.F.R. § 52.21(i), a nonattainment NSR permit pursuant to OAC 3745-31, or a minor NSR permit pursuant to OAC 3745-31. In addition, for modifications after 1992, no information was provided to the permitting agency of actual emissions after the modification as required by 40 § C.F.R. 52.21(b)(21)(v).

13. None of the modifications at the W.H. Sammis plant fall within the "routine maintenance, repair and replacement" exemption found at 40 C.F.R. §§ 52.21(b)(2)(iii)(a) and OAC 3745-31 because each change is an expensive capital expenditure performed infrequently at the plant that constituted the replacement and/or redesign of a boiler component with a long useful life. In each instance, the change was performed to increase capacity, regain lost capacity, and/or extend the life of the unit. In many instances, the original component was replaced with a component that was substantially redesigned in a manner that increased emissions. That the "routine maintenance, repair and replacement" exemption does not apply to such capital expenditures was known to the utility industry since at least 1988 when EPA issued a widely publicized applicability determination regarding utility modifications at a Wisconsin Electric Power Co. ("WEPCO") facility. EPA's interpretation of this exemption was upheld by the court of appeals in 1990. Wisconsin Electric Power Co. v. Reilly, 893 F.2d 901 (7th Cir. 1990).

14. None of the modifications at the W.H. Sammis plant fall within the exemption found at 40 C.F.R. § 52.21(b)(2)(iii)(f) for an "increase in the hours of operation or in the production rate." This exemption is limited to stand-alone increases in operating hours or production rates, not where such increases follow or are otherwise linked to construction activity. That the hours of operation/rates of production exemption does not apply where construction activity is at issue was known to the utility industry since at least 1988 when EPA issued a widely publicized applicability determination regarding utility modifications at a Wisconsin Electric Power Co. ("WEPCO") facility. EPA's interpretation of this exemption was upheld twice by the court of appeals, in 1989 and in 1990. Puerto Rican Cement Co. v. EPA, 889 F.2d 292 (1st Cir. 1989); Wisconsin Electric Power Co. v. Reilly, 893 F.2d 901 (7th Cir. 1990).

15. None of the modifications at the W.H. Sammis plant fall within the "demand growth" exemption found at 40 C.F.R. § 52.21(b)(2)(iii)(f) and OAC 3745-31 because for each modification a physical change was performed which resulted in the emissions increase.

16. Each of these modifications resulted in a net significant increase in emissions from the W.H. Sammis plant for NO_X, SO_2 and/or PM. 40 C.F.R. § 40 C.F.R. § 52.21(b)(23)(i) and OAC 3745-31.

17. Therefore, FirstEnergy, Ohio Edison and PennPower violated and continue to violate 52.21(i) and OAC 3745-31 by constructing and operating modifications at the W.H. Sammis plant without the necessary permit required by the SIP of Ohio.

18. Each of these violations exists from the date of start of construction of the modification until the time that FirstEnergy, Ohio Edison and PennPower obtain the appropriate NSR permit and operate the necessary pollution control equipment to satisfy the Ohio SIP.

ENFORCEMENT

Section 113(a)(1) of the Act provides that at any time after the expiration of 30 days following the date of the issuance of this NOV, the Regional Administrator may, without regard to the period of violation, issue an order requiring compliance with the requirements of the state implementation plan or permit, or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties of not more than $25,000 per day for each violation before January 30, 1997, and no more than $27,500 per day for each violation after January 30, 1997.

OPPORTUNITY FOR CONFERENCE

Respondents may, upon request, confer with EPA. The conference will enable Respondents to present evidence bearing on the finding of violation, on the nature of violation, and on any efforts it may have taken or proposes to take to achieve compliance. Respondent has a right to be represented by counsel. A request for a conference must be made within 10 days of receipt of this NOV, and the request for a conference or other inquiries concerning the Notice should be made in writing to:

Gregory Jaffe
U.S. Environmental Protection Agency
Air Enforcement Division
401 M Street, S.W. (2242-A)
Washington, D.C. 20460
(202) 564-1309

11/2/99
Date

Bruce C. Buckheit
Bruce C. Buckheit
Director, Air Enforcement Division
OECA