



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUN 16 2009

REPLY TO THE ATTENTION OF:

AE-17J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Brett Wiltshire, Plant Manager
Oxbow Midwest Calcining LLC
12308 South New Avenue
Lemont, Illinois 60439

Re: Notice of Violation/Finding
of Violation

Dear Mr. Wiltshire:

The U.S. Environmental Protection Agency is issuing the enclosed Notice of Violation (NOV)/Finding of Violation (FOV) to Oxbow Midwest Calcining LLC., (Oxbow or you) under Section 113(a)(1) and (3) of the Clean Air Act (the Act), 42 U.S.C. § 7413(a)(1) and (3). We find that you have violated the Prevention of Significant Deterioration of Air Quality requirements under Section 165 of the Act, 42 U.S.C. § 7475, the Title V permit requirements under Sections 502(a) and 504(a) of the Act, 42 U.S.C. §§ 7661a(a) and 7661c(a), and the Illinois State Implementation Plan at your Lemont, Illinois facility.

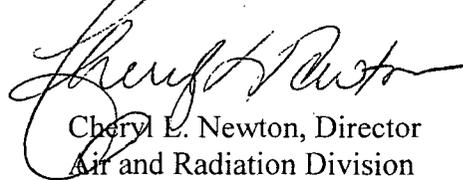
Section 113 of the Clean Air Act gives us several enforcement options. These options include issuing an administrative compliance order, issuing an administrative penalty order, and bringing a judicial civil or criminal action.

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.

The contact in this matter is Mr. Farro Assadi. You may call him at (312) 886-1424 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,



Cheryl E. Newton, Director
Air and Radiation Division

Enclosure

cc: Ray Pilapil, Manager
Bureau of Air
Compliance and Enforcement Section
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62702

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)
)
Oxbow Midwest Calcining LLC.) NOTICE OF VIOLATION and
Lemont, Illinois) FINDING OF VIOLATION
)
) EPA-5-09-04-IL
Proceedings Pursuant to)
the Clean Air Act,)
42 U.S.C. §§ 7401 et seq.)

NOTICE AND FINDING OF VIOLATION

The U. S. Environmental Protection Agency (EPA) is issuing this Notice of Violation (NOV) and Finding of Violation (FOV) under Section 113(a)(1) and (3) of the Clean Air Act (Act), 42 U.S.C. § 7413(a)(1) and (3). EPA finds that Oxbow Midwest Calcining LLC (Oxbow) is violating Part C of the Act, 40 C.F.R. § 52.21, and the Illinois State Implementation Plan (SIP).

Section 113 of the Act, 42 U.S.C. § 7413, provides you with the opportunity to request a conference with us to discuss the violations identified in this NOV and FOV. This conference will provide you a chance to present information on the identified violations, any efforts you have taken to comply, and the steps you will take to prevent future violations. Please plan for the facility's technical and management personnel to take part in these discussions. You may have an attorney represent and accompany you at this conference.

Explanation of Violations

The following statutory and regulatory background, factual background, and violations are relevant to this NOV:

Statutory and Regulatory Background

Prevention of Significant Deterioration

1. Section 108(a) of the Act, 42 U.S.C. § 7408(a), requires EPA to identify and prepare air quality criteria for each air pollutant, emissions of which may endanger public health or welfare and the presence of which results from numerous or diverse mobile or stationary sources. For each such "criteria" pollutant, Section 109 of the Act, 42 U.S.C. § 7409, requires EPA to promulgate national ambient air quality standards (NAAQS) requisite to protect the public health

and welfare. Pursuant to Sections 108 and 109, EPA has identified and promulgated NAAQS for sulfur dioxide (SO₂) and certain other pollutants.

2. Under Section 107(d) of the Act, 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. An area that meets the NAAQS for a particular pollutant is an “attainment” area. An area that does not meet the NAAQS is a “nonattainment” area. An area that cannot be classified due to insufficient data is “unclassifiable.”

3. Section 110 of the Act, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA for approval a SIP that provides for the attainment and maintenance of the NAAQS. Upon EPA approval, SIP requirements are Federally enforceable under Section 113 of the Act, 42 U.S.C. §§ 7413(a), (b); 40 C.F.R. § 52.23.

4. Part C of Title I of the Act, 42 U.S.C. §§ 7470-7492, sets forth requirements for the prevention of significant deterioration (PSD) of air quality in those areas designated as attaining the NAAQS standards.

5. Section 165(a) of the Act, 42 U.S.C. § 7475(a), prohibits the construction and subsequent operation of a major emitting facility in an area designated as attainment unless a PSD permit has been issued. Section 169(1) of the Act, 42 U.S.C. § 7479(1), defines “major emitting facility” as a source with the potential to emit 250 tons per year or more of any air pollutant.

6. Sections 110(a)(2)(C) and 161 of the Act, 42 U.S.C. §§ 7410(a)(2)(C) and 7471, require states to adopt a SIP that contains emission limitations and such other measures as may be necessary to prevent significant deterioration of air quality in areas designated as attainment or unclassifiable. A state may comply with Sections 110(a) and 161 by having its own PSD regulations approved as part of its SIP by EPA, which must be at least as stringent as those set forth at 40 C.F.R. § 51.166. If a state does not have a PSD program that has been approved by EPA and incorporated into the SIP, the federal PSD regulations set forth at 40 C.F.R. § 52.21 shall be incorporated by reference into the SIP. 40 C.F.R. § 52.21(a).

7. On August 7, 1980, EPA disapproved Illinois’ PSD program and incorporated the federal PSD regulations into the Illinois SIP at 40 C.F.R. § 52.738 (45 Fed. Reg. 52781 (Aug. 7, 1980)). On March 10, 2003, EPA incorporated revised provisions of the federal PSD regulations into the Illinois SIP at 40 C.F.R. § 52.738(b) (68 Fed. Reg. 11323 (Mar. 10, 2003)). All conduct relevant to the PSD program violations alleged in this NOV occurred before the 2003 revisions to the federal PSD regulations, and those regulations did not apply retroactively, so all references herein are to the pre-2003 regulations.

8. 40 C.F.R. § 52.21(b)(1)(i)(b) defines a major stationary source as any source which emits or has the potential to emit, 250 tons per year or more of any pollutant subject to the regulation under the Act.
9. 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 emission increase of any pollutant subject to the regulations under the Act.
10. 40 C.F.R. § 52.21(b)(23)(i) defines a significant net emissions increase for SO₂ as a rate of emissions which would equal or exceed 40 tons per year of SO₂.
11. 40 C.F.R. § 52.21(i)(1) prohibits the actual construction of a major stationary source or major modification without a permit which provides that the major stationary source or modification will meet the requirements of 40 C.F.R. § 52.21 (j) through (r).
12. 40 C.F.R. § 52.21(j) provides that for each pollutant subject to regulation under the Act for which a major modification would result in a significant net emissions increase at the source, the owner or operator of the major modification shall apply Best Available Control Technology (BACT) to each proposed emissions unit at which the increase would occur as the result of physical changes and changes in the methods of operation of the unit.
13. 40 C.F.R. § 52.21(r) states that any owner or operator of a source subject to PSD regulations who operates a source or modification without applying for and receiving approval under the PSD regulations is subject to enforcement action.

Title V Permit Requirements

14. 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 Clean Air Act, including PSD requirements, are collected in one place.
15. Pursuant to Section 502(b) of the Act, 42 U.S.C. § 7661a(b), EPA promulgated regulations establishing the minimum elements of a Title V permit program to be administered by any air pollution control agency. 57 Fed. Reg. 32,295 (July 21, 1992). Those regulations are codified at 40 C.F.R. Part 70.
16. On March 7, 1995, EPA granted interim approval of the State of Illinois’ Title V operating permit program. EPA granted final approval effective on November 30, 2001. 40 C.F.R. Part 70, Appendix A. The Illinois Clean Air Act Permit Program (CAAPP) is codified at 415 Illinois Compiled Statutes (ILCS) 5/39.5.

17. Section 502(a) of the Act, 42 U.S.C. § 7661a(a), EPA's implementing regulations at 40 C.F.R. § 70.7(b), and the pertinent provisions of the Illinois CAAPP at 415 ILCS 5/39.5 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.

18. Section 504(a) of the Act, 42 U.S.C. § 7661c(a), EPA's implementing regulations at 40 C.F.R. § 70.6(a)(1), and the pertinent provisions of the Illinois CAAPP at 415 ILCS 5/39.5 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 Clean Air Act and the requirements of the applicable SIP, including any applicable PSD requirement to comply with an emission rate that meets BACT.

19. Section 503(c) of the Act, 42 U.S.C. § 7661b(c), EPA's Title V regulations at 40 C.F.R. §§ 70.5(a) and (c), and the pertinent provisions of the Illinois CAAPP at 415 ILCS 5/39.5 have at all relevant times required that any application for a Title V permit be complete and include, among other things, the citation and description of all requirements applicable to the source and a description and compliance plan for requirements for which the source is not in compliance.

Factual Background

20. Oxbow owns and operates a coke calcining facility located at 12308 S. New Avenue, Lemont, Illinois. Prior to June 2008, Unocal Corporation d/b/a Chicago Carbon Company (Chicago Carbon) owned and operated this facility.

21. Oxbow is located in the Village of Lemont, the Township of DuPage, the County of Will, in the State of Illinois.

22. Presently, the County of Will is an area designated as unclassifiable for the NAAQS for SO₂. 40 C.F.R. § 81.314.

23. In 1971, Chicago Carbon constructed its K-1 calcining unit. The K-1 calcining unit emits, or has the potential to emit, at least 250 tons per year of SO₂.

24. In or about October of 1998, the County of Will was in an area designated as unclassifiable for the NAAQS for SO₂. 40 C.F.R. § 81.314.

25. In or about October of 1998, Chicago Carbon replaced the economizer on the waste heat boiler of its K-1 calcining unit.

26. Chicago Carbon did not obtain a PSD permit prior to replacing the economizer.
27. Since June 2008, Oxbow has operated the modified K-1 unit without a PSD permit.
28. Chicago Carbon did not install BACT for the control of SO₂ emissions prior to replacing the economizer.
29. Since June 2008, Oxbow has operated the modified K-1 unit without installing BACT to control SO₂ emissions.
30. On June 8, 2000, the Illinois Environmental Protection Agency (Illinois EPA) issued a Title V permit to Chicago Carbon. The Title V permit issued by Illinois EPA does not include emission limitations consistent with BACT for the facility.

Violations

31. Replacement of the economizer on the waste heat boiler was a physical change that resulted in a significant net emission increase of SO₂, and therefore was a major modification as defined in 40 C.F.R. § 52.21(b), as incorporated in the Illinois SIP.
32. From June 2008 to the present, Oxbow has operated the modified K-1 unit without a PSD permit in violation of Section 165(a)(1) of the Act, 42 U.S.C. § 7475(a), and 40 C.F.R. § 52.21(i), as incorporated into the Illinois SIP. From June 2008 to the present, Oxbow has operated the modified K-1 unit without installing BACT for the control of SO₂ emissions in violation of Section 165(a)(1) of the Act, 42 U.S.C. § 7475(a), and 40 C.F.R. § 52.21(j), as incorporated into the Illinois SIP.
33. From June 2008 to the present, Oxbow has operated the facility without having a valid Title V operating permit that requires compliance with BACT in violation of Sections 502(a) and 504(a), 42 U.S.C. §§ 7661a(a) and 7661c(a), EPA's Title V regulations at 40 C.F.R. § 70.6(a) and (c), and the pertinent provisions of the Illinois CAAPP at 415 ILCS 5/39.5.

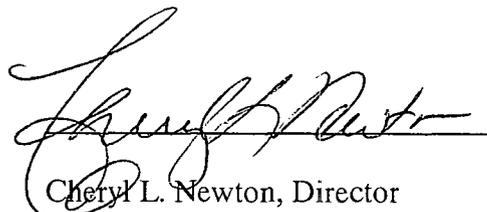
Environmental Impact of Violations

The K-1 unit emits over 2,800 tons of SO₂ per year. SO₂ causes a wide variety of health and environmental impacts. Exposure to high concentrations of SO₂ for short periods of time can constrict the bronchi and increase mucous flow, making breathing difficult. Long term exposures to high levels of SO₂ gas and particles cause respiratory illness and aggravate existing heart disease. In addition, SO₂ reacts with other chemicals in the air to form tiny sulfate particles. When these are inhaled, they gather in the lungs and are associated with increased respiratory symptoms and disease, difficulty in breathing, and premature death. Children, the elderly, those

with chronic lung disease and asthmatics are especially susceptible to these effects.

6/16/09

Date

A handwritten signature in cursive script, appearing to read "Cheryl L. Newton", written over a horizontal line.

Cheryl L. Newton, Director
Air and Radiation Division

CERTIFICATE OF MAILING

I, Tracy Jamison, certify that I sent a Notice and Finding of Violation, No. EPA-5-09-04-IL, by

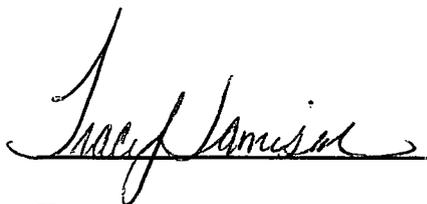
Certified Mail, Return Receipt Requested, to:

Brett Wiltshire, Plant Manager
Oxbow Midwest Calcining LLC
12308 South New Avenue
Lemont, Illinois 60439

I also certify that I sent a copy of the Notice and Finding of Violation by first class mail to:

Ray Pilapil, Manager
Bureau of Air
Compliance and Enforcement Section
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62702

on this 17 day of June, 2009.



Tracy Jamison
Office Automation Assistant
AECAS,(MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0006 0187 6522