



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

SEP 29 2009

REPLY TO THE ATTENTION OF:

(AE-17J)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Dirk Cox
Operational Manager
St. Marys Cement, Inc.
16000 Bells Bay Road
Charlevoix, Michigan 49720

Dear Mr. Cox:

This is to advise you that the U.S. Environmental Protection Agency (EPA) has determined that the St. Marys Cement, Inc. Charlevoix Plant (St. Marys) at 16000 Bells Bay Road, Charlevoix, Michigan is in violation of the Clean Air Act (CAA) and associated state or local pollution control requirements. A discussion of the requirements violated is provided below. A Notice of Violation and Finding of Violation (NOV/FOV) for these violations is being issued and is enclosed for your review.

The CAA requires the development of Primary and Secondary National Ambient Air Quality Standards (NAAQS) to protect public health and welfare. To attain and maintain these standards, each state is required to develop an implementation plan. Michigan's State Implementation Plan (Michigan SIP) includes the following requirements:

- 1) No person shall commence construction or modification of any air pollution source without first applying for and obtaining a construction permit from the commissioner of the Michigan Department of Environmental Quality.
- 2) An owner or operator may not begin construction of a major modification at a major stationary source in an area that meets the NAAQS without first obtaining a construction permit that contains an emission limit that represents the best available control technology.
- 3) An owner or operator may not begin operation of a major modification at a major stationary source in an area that meets the NAAQS without installing the best available control technology for reducing the emissions of the pollutant for which the modification is major.

EPA finds that St. Marys has violated the above-listed Michigan SIP requirements.

Since St. Marys's facility is subject to applicable requirements under the Michigan SIP that are not listed in its Title V permit, it has also violated Title V of the CAA and its associated regulations which require all CAA requirements applicable to a source to be incorporated into that source's Title V permit.

Section 113 of the CAA gives us several enforcement options to resolve these violations, including: issuing an administrative compliance order, issuing an administrative penalty order, bringing a judicial civil action, and bringing a judicial criminal action.

Section 113 of the CAA provides you with the opportunity to request a conference with us about the violations alleged in the NOV/FOV. A conference should be requested within 10 days following receipt of this notice. A conference should be held within 30 days following receipt of this notice. This conference will provide you with an opportunity 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 your facility's technical and management personnel to take part in these discussions. You may have an attorney represent and accompany you at this conference.

The EPA contact in this matter is Lynne Roberts. You may call her at (312) 886-0250, if you wish to request a conference. EPA hopes that this NOV/FOV will encourage St. Marys's compliance with the requirements of the Clean Air Act.

Sincerely,

A handwritten signature in black ink, appearing to read "Cheryl L. Newton". The signature is fluid and cursive, with a prominent "C" at the beginning and a "Jr" at the end.

Cheryl L. Newton.
Director
Air and Radiation Division

Enclosure

cc: Janis Denman, Supervisor
Gaylord District Office
Michigan Department of Environmental Quality

**U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)	
)	
St. Marys Cement, Inc. (U.S.))	NOTICE OF VIOLATION and
Charlevoix, Michigan)	FINDING OF VIOLATION
)	
)	EPA-05-09-MI-15
Proceedings Pursuant to)	
the Clean Air Act,)	
42 U.S.C. §§ 7401 et seq.)	

NOTICE AND FINDING OF VIOLATION

St. Marys Cement, Inc. (St. Marys or you) owns and operates a Portland cement facility at 16000 Bells Bay Road, Charlevoix, Michigan. The facility consists of a number of pieces of equipment that generate air pollution and are subject to provisions of the Clean Air Act (the Act). This facility currently operates a one-stage preheater kiln, clinker cooler, and cement kiln dust storage, disposal, mining, and handling facilities/emissions units.

The U.S. Environmental Protection Agency (EPA) is sending this Notice of Violation and Finding of Violation (NOV/FOV or Notice) to notify you of several items. We find that you constructed a major modification causing a significant increase in nitrogen oxides (NO_x) at a major stationary source in an area that was designated as attainment for ozone, NO_x at the time of the modification, without first obtaining a construction permit meeting the Prevention of Significant Deterioration (PSD) requirements in the Michigan State Implementation Plan (Michigan SIP). [Administrative Code (MAC), 2002 AACS R 336.1801(4)(h) (Rule 801(4)(h))] and the federal PSD regulations at 40 C.F.R. 52.21. We find that you have also failed to comply with Title V requirements by not incorporating all applicable regulations into your Title V operating permit. These violations constitute violations of the Clean Air Act (the Act or CAA).

Section 113 of the Act provides you with the opportunity to request a conference with us to discuss the violations alleged in the NOV/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.

STATUTORY AND REGULATORY BACKGROUND

1. The Clean Air Act is designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population. Section 101(b)(1) of the Act, 42 U.S.C. § 7401(b)(1).

A. The National Ambient Air Quality Standards.

2. Section 108(a) of the Act, 42 U.S.C. § 7408(a), requires the Administrator of 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.

3. Pursuant to Sections 108 and 109, 42 U.S.C. §§ 7408 and 7409, EPA has identified ozone as a criteria pollutant, and has promulgated NAAQS for this pollutant, 40 C.F.R. §§50.9 and 50.10 (2004). In 40 C.F.R. §51.852, NO_x is designated as a precursor of ozone.

4. Pursuant to Section 108(h) of the Act, EPA has established the RACT/BACT/LAER clearinghouse to make emission control technology available to the States and to the general public.

5. 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 termed an “attainment” area with respect to such pollutant. An area that does not meet the NAAQS for a particular pollutant is termed a “nonattainment” area with respect to such pollutant.

6. An area that cannot be classified as either “attainment” or “nonattainment” with respect to a particular pollutant due to insufficient data is termed “unclassifiable” with respect to such pollutant.

7. At all times relevant to this Notice of Violation, Charlevoix County, Michigan, the area in which the St. Mary’s Charlevoix facility is located, has been classified as attainment for NO_x.

B. The Prevention of Significant Deterioration Program

8. Part C of Title I of the Act, 42 U.S.C. §§ 7470-7492, sets forth requirements for the prevention of significant deterioration of air quality in those areas designated as either attainment or unclassifiable for purposes of meeting the NAAQS standards. These requirements are designed to protect public health and welfare, to assure that economic growth will occur in a manner consistent with the preservation of existing clean air

resources, and to assure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of such a decision and after public participation in the decision making process. 42 U.S.C. § 7470. These provisions are referred to herein as the “PSD program.”

9. Section 165(a) of the Act, 42 U.S.C. § 7475(a), among other things, prohibits the construction and operation of a “major emitting facility” in an area designated as attainment or unclassifiable unless a permit has been issued that comports with the requirements of Section 165 and the facility employs the best available control technology (“BACT”) for each pollutant subject to regulation under the Act that is emitted from the facility.

10. Section 169(1) of the Act, 42 U.S.C. § 7479(1), designates Portland Cement plants which emit or have the potential to emit one hundred tons per year or more of any pollutant to be “major emitting facilities.”

11. Section 169(2)(C) of the Act, 42 U.S.C. § 7479(2)(C), defines “construction” to include “modification” (as defined in Section 111(a) of the Act). “Modification” is defined in Section 111(a) of the Act, 42 U.S.C. § 7411(a), to be “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 or which results in the emission of any air pollutant not previously emitted.”

12. If a state does not have a PSD program that has been approved by EPA and incorporated into its SIP, EPA may incorporate the federal PSD regulations set forth at 40 C.F.R. § 52.21 by reference into the SIP. 40 C.F.R. § 52.21(a).

13. The regulations appearing at 40 C.F.R. § 52.21 were incorporated into and made part of the Michigan SIP at the time of the major modification at issue in this case. *See* 68 FR 11316 (March 10, 2003; effective March 3, 2003). All citations to the PSD regulations herein refer to the provisions of 40 C.F.R. § 52.21 incorporated into and made part of the Michigan SIP as applicable at the time of the major modification alleged herein.

14. The PSD regulations set forth in 40 C.F.R. § 52.21 apply to any “major stationary source” that intends to construct a “major modification” in an attainment or unclassifiable area. 40 C.F.R. § 52.21(i)(2).

15. Under the PSD regulations, “major stationary source” is defined to include, *inter alia*, St. Mary’s Cement, which emits or has the potential to emit one hundred tons per year or more of any regulated air pollutant. 40 C.F.R. § 52.21(b)(1)(i)(a).

16. Under the PSD regulations, “major modification” is defined at 40 C.F.R. § 52.21(b)(2)(i) as any physical change 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 regulation under the Act.

17. Under the PSD regulations, “net emissions increase” means the amount by which the sum of the following exceeds zero: “[a]ny increase in actual emissions from a particular physical change or change in method of operation at a stationary source” and “[a]ny other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.” 40 C.F.R. § 52.21(b)(3)(i).

18. Under the PSD regulations, a “significant” net emissions increase means an increase in the rate of emissions that would equal or exceed 40 tons per year of NO_x. 40 C.F.R. § 52.21(b)(23)(i).

19. The PSD regulations define “actual emissions” as the average rate, in tons per year, at which the unit “actually emitted the pollutant during a two-year period which precedes the particular date” and which is representative of normal operation. 40 C.F.R. § 52.21(b)(21)(i)-(ii).

20. Under the PSD regulations, “construction” means “any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit)” that “would result in a change in actual emissions.” 40 C.F.R. § 52.21(b)(8); *see also* 42 U.S.C. § 7479(2)(C) (“construction” includes the “modification” (as defined in Section 111(a) of the Act, 42 U.S.C. § 7411(a)) of any source or facility).

21. A major stationary source in an attainment or unclassifiable area planning to construct a major modification under the foregoing definitions is subject to the requirements of paragraphs (j) through (r) of 40 C.F.R. § 52.21.

22. A major stationary source subject to the requirements of paragraphs (j) through (r) must, among other things, perform an analysis of source impacts, perform air quality modeling and analysis, apply BACT, and allow for meaningful public participation in the process. 40 C.F.R. § 52.21(j)-(r).

23. No major stationary source subject to the requirements of paragraphs (j) through (r) of 40 C.F.R. § 52.21 shall begin actual construction of a major modification without a permit which states that the stationary source or modification will meet those requirements (a “PSD permit”). 40 C.F.R. § 52.21(i)(1).

24. Any owner or operator of a source or modification subject to 40 C.F.R. § 52.21 that constructs or operates a source not in accordance with a PSD application or commences construction without first applying for and receiving PSD permitting approval is subject to an enforcement action. 40 C.F.R. § 52.21(r)(1).

C. Title V Program

25. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), provides that no source may operate without a Title V permit after the effective date of any permit program approved or promulgated under Title V of the Act. EPA first promulgated regulations governing state operating permit programs on July 21, 1992. See 57 Fed. Reg. 32295; 40 C.F.R. Part 70.

26. Section 503 of the CAA, 42 U.S.C. § 7661b, sets forth the requirement to submit a timely, accurate, and complete application for a permit, including information required to be submitted with the application.

27. Section 504(a) of the CAA, 42 U.S.C. § 7661c(a), requires that each Title V permit include enforceable emission limitations and standards, a schedule of compliance, and other conditions necessary to assure compliance with applicable requirements, including those contained in a state implementation plan. 42 U.S.C. § 7661c(a).

28. 40 C.F.R. § 70.1(b) provides that: "All sources subject to these regulations shall have a permit to operate that assures compliance by the source with all applicable requirements."

29. 40 C.F.R. § 70.2 defines "applicable requirement" to include "(1) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the Act that implements the relevant requirements of the Act, including revisions to that plan promulgated in part 52 of this chapter . . ."

30. 40 C.F.R. § 70.7(b) provides that no source subject to 40 C.F.R. Part 70 requirements may operate without a permit as specified in the Act.

31. 40 C.F.R. § 70.5(a) and (c) require timely and complete permit applications for Title V permits with required information that must be submitted and 40 C.F.R. § 70.6 specifies required permit content.

32. 40 C.F.R. § 70.5(b) provides that: "Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information."

FACTUAL BACKGROUND

33. St. Marys is considered a major stationary source according to 40 C.F.R. § 52.21(b)(1)(i)(a) that has the potential to emit a number of regulated PSD pollutants in excess of 100 tons per year.

34. In February 2004, St. Marys installed an upgrade to the direct fired primary axial air blower on the burner floor at the fire end of the kiln.
35. The February 2004 upgrade was a physical change that constitutes a modification to an air pollution source.
36. The February 2004 project allows St. Marys to increase the clinker production in a manner that would increase emissions of NO_x by significant amounts, thus making the project a major modification.
37. St. Marys is located in Charlevoix County, Michigan. In February 2004, and at all times relevant to this Notice of Violation, Charlevoix County, Michigan was listed as attainment for NO_x.
38. With regard to NO_x, St. Marys's failure to obtain a permit for this major modification meeting the PSD requirements is a violation of 40 C.F.R. § 52.21(i)(1), which has been incorporated into the Michigan SIP at 40 C.F.R. Subpart X, §52.1180(b).
39. On August 1, 2006, the Michigan Department of Environmental Quality entered into a "Stipulation for Entry of Final Order by Consent" (MDEQ Consent Order) with St. Mary's Cement. Paragraph 10 of this MDEQ Consent Order set an emission limit of 7.67 pounds of NO_x per ton of clinker produced from October 1 through April 20, and 6.50 pounds of NO_x per ton of clinker produced from May 1 through September 30.
40. At the time these emissions limits were established, they did not meet the requirement for BACT as evidenced by the RACT/BACT/LAER clearinghouse established pursuant to Section 108 of the Act.

FINDING OF VIOLATIONS

41. The activity described in Paragraphs 33-40 is a major modification that caused a significant net emissions increase of NO_x within the meaning of the Clean Air Act and 40 C.F.R. § 52.21. St. Mary's Cement failed to apply for or obtain a PSD permit prior to commencing construction of this upgrade to the direct fired primary axial air blower.
42. St. Mary's Cement violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a) and 40 C.F.R. 52.21 by commencing construction of, and continuing to operate, a major modification at its facility in Charlevoix, Michigan without applying for and obtaining a PSD/NNSR permit. 42 U.S.C. § 7475(a) and 40 CFR §§ 52.21(i)(1), 52.21(r)(1) and 52.1180(b).
43. St. Mary's Cement did not install BACT for the control of NO_x prior to commencing construction of the upgrade to the direct fired primary axial air blower, and continues to operate its Charlevoix, Michigan facility without BACT and offsets.

44. St. Mary's Cement violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a) and 40 C.F.R. § 52.21 by failing to install and operate BACT for such pollutants. 42 U.S.C. § 7475(a) and 40 C.F.R. § 52.21(j).

45. Since St. Mary's Cement has failed to submit a timely, accurate, and complete Title V permit application for its Charlevoix, Michigan facility with information pertaining to the modifications identified in Paragraphs 33-38 and with information concerning all applicable requirements, including, but not limited to, the requirement to apply, install, and operate BACT for NO_x at the facility and also failed to supplement or correct the Title V permit applications for this facility in violation of Sections 502, 503, and 504 of the Act, 42 U.S.C. §§ 7661a, 7661b and 7661c; the regulations at 40 C.F.R. Part 70, including, but not limited to, 40 C.F.R. §§ 70.1(b), 70.5, 70.6, and 70.7(b); and the Michigan Title V provisions at 40 C.F.R. Part 70, Appendix A (Michigan).

ENFORCEMENT PROVISIONS

46. Sections 113(a)(1) and (3) of the Act, 42 U.S.C. § 7413(a)(1) and (3), provide that the Administrator may bring a civil action in accordance with Section 113(b) of the Act, 42 U.S.C. § 7413(b), whenever the Administrator finds that any person has violated or is in violation of any requirement or prohibition of, *inter alia*, the PSD requirements of Section 165(a) of the Act, 42 U.S.C. § 7475(a); or Title V of the Act, 42 U.S.C. §§ 7661-7661f. *See also* 40 C.F.R. § 52.23.

46. Under Section 113(b) of the Act, 42 U.S.C. § 7413(b), the Administrator may commence a civil judicial enforcement action against any person whenever such person has violated, or is in violation of, *inter alia*, the requirements or prohibitions described in the preceding paragraph. The civil enforcement action may seek a permanent or temporary injunction, and/or for a civil penalty of up to \$25,000 per day, and as periodically increased pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, 40 C.F.R. § 19.4, and 74 Fed. Reg. 626 (Jan. 7, 2009).

47. Section 167 of the Act, 42 U.S.C. § 7477, authorizes the Administrator to initiate an action for injunctive relief, as necessary to prevent the construction, modification or operation of a major emitting facility which does not conform to the PSD requirements in Part C of the Act.

ENVIRONMENTAL IMPACTS

48. Excess emissions of NO_x increase ground level concentrations of ozone and nitrogen dioxide, both of which can cause respiratory inflammation, increased difficulty breathing, and lung damage. NO_x emissions also contribute to acid rain, global climate change, the formation of fine particles in the atmosphere, water quality deterioration, and visibility impairment.

9/29/09
Date


Cheryl L. Newton
Director
Air and Radiation Division

CERTIFICATE OF MAILING

I, Betty Williams, certify that I sent a Notice and Finding of Violation, No. EPA-5-09-MI-15 by Certified Mail, Return Receipt Requested, to:

Dirk Cox
Operational Manager
St. Marys Cement, Inc. (U.S.)
16000 Bells Bay Road
Charlevoix, Michigan 49720

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

Ms. Janis Denman
Supervisor
Gaylord District Office
Michigan Department of Environmental Quality
100 West M-32
Gaylord, Michigan 49735-9282

and

Tom Hess
Enforcement Unit Supervisor
Michigan Department of Environmental Quality
Air Quality Division
525 West Allegan
P.O. Box 30260
Lansing, Michigan 48909-7760

on the 29th day of September, 2009.



Betty Williams, Secretary
AECAS, (IL/IN)

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0005 8915 9426