



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

FEB 1 2011

REPLY TO THE ATTENTION OF:
(AE-17J)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Joseph P. Montgomery
Title V Responsible Official
Martin Marietta Magnesia Specialties, Inc.
755 Lime Road
Woodville, Ohio 43469

Re: Notice of Violation/Finding of Violation
Martin Marietta Magnesia Specialties, Woodville, Ohio

Dear Mr. Montgomery:

This letter advises you that the Environmental Protection Agency has determined that Martin Marietta Magnesia Specialties' facility at 755 Lime Road, Woodville, Ohio (Martin Marietta, the facility, or you) has violated the Clean Air Act (CAA or the Act) and the Ohio State Implementation Plan (Ohio SIP). The requirements violated are described below. We are today issuing to you a Notice of Violation/Finding of Violation (NOV/FOV) for these violations.

Section 112 of the Act, 42 U.S.C. § 7412, requires the establishment of emission standards for hazardous air pollutants (HAPs). Section 112(f)(4) of the Act, 42 U.S.C. § 7412(f)(4), prohibits the emission of HAPs in violation of the promulgated emission standards. 40 C.F.R. § 63, Subpart A, General Provisions, was promulgated pursuant to Section 112 of the Act on March 16, 1994 (59 FR 12430). Among other requirements, the General Provisions require that the owner or operator of an affected source must at all times operate and maintain its equipment in a manner consistent with good air pollution control practices for minimizing emissions. 40 C.F.R. 63, Subpart AAAAA, National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants (Lime MACT), was promulgated pursuant to Section 112 of the Act on January 4, 2004. 69 Fed. Reg 416. Martin Marietta is an existing source under the Lime MACT. The Lime MACT limits 6-minute average opacity from a lime kiln controlled by an electrostatic precipitator for any 6-minute period to 15 percent.

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. Among other things, each implementation plan 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. The State of Ohio has incorporated such a permitting program into the Ohio SIP at

Ohio Administrative Code (OAC) 3745-31. Under this program, owners or operators must obtain a permit to install (PTI) from the director of the Ohio Environmental Protection Agency (Ohio EPA) before beginning installation of a new source of air pollutants or the modification of an existing air contaminant source.

Section 502(a) of the Act, and applicable regulations at 40 C.F.R. § 70.7(b) and OAC) 3745-77, require the owner or operator of a major source of air emissions to apply for a Title V permit, and to operate its source in compliance with the requirements of the Title V permit. OEPA issued a Title V permit to Martin Marietta with an effective date of June 20, 2003. The permit requires, among other things, that total suspended particulate emissions from Kiln #1 not exceed 20%, pursuant to OAC 3745-17-07(A).

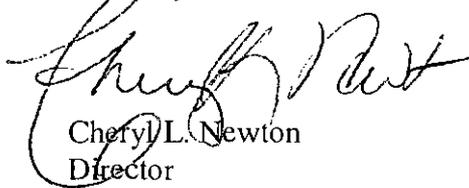
Title I, Part C of the CAA requires that all SIP permit programs contain rules regulating the construction and modification of major stationary sources in areas that have achieved attainment with the NAAQS. These rules are known as Prevention of Significant Deterioration (PSD) and require any major stationary source must obtain a preconstruction permit prior to commencing construction on any modification, if the modification is major in that it is projected to 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 NAAQS for that pollutant. All preconstruction permits issued to sources subject to PSD require (1) the application of Best Available Control Technology (BACT) and (2) a demonstration that the proposed modification will not cause or contribute to a violation of the NAAQS or cause any other significant deterioration of air quality. The State of Ohio has incorporated the PSD rules into its SIP.

EPA finds that you have violated the above-listed rules and regulations at your Woodville, Ohio facility. Section 113 of the Act gives EPA 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 Act provides you with the opportunity to request a conference with us about 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. You may have an attorney present at this conference.

The EPA contacts in this matter are Virginia Palmer and Kathleen Schnieders. You may call them at (312) 353-2089 and (312) 353-8912, respectively. If you wish to request a conference, you should do so within 10 days following receipt of this NOV/FOV. The parties should hold the conference within 30 days following receipt of this notice.

Sincerely,

A handwritten signature in black ink, appearing to read "Cheryl L. Newton". The signature is fluid and cursive, with the first name "Cheryl" being the most prominent.

Cheryl L. Newton
Director
Air and Radiation Division

Enclosure

cc: Bob Hodanbosi, Ohio Environmental Protection Agency

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)	NOTICE OF VIOLATION/
)	FINDING OF VIOLATION
Martin Marietta Magnesia Specialties, LLC)	
Woodville, Ohio)	EPA-5-11-OH-06
)	
Proceedings Pursuant to)	
the Clean Air Act,)	
42 U.S.C. §§ 7401 et seq.)	

NOTICE AND FINDING OF VIOLATION

Martin Marietta Magnesia Specialties (you or Martin Marietta) owns and operates a lime manufacturing facility at 755 Lime Road, Woodville, Ohio (the facility). United States Environmental Protection Agency (EPA) is sending this Notice of Violation and Finding of Violation (NOV/FOV) to you because you have emitted visible particulate emissions in excess of the limits established in your Title V permit and the National Emission Standards for Lime Manufacturing set forth at 40 C.F.R. 63, Subpart AAAAA (Lime MACT). Additionally, you have conducted a major modification at the facility without obtaining a Prevention of Significant Deterioration (PSD) permit as required by PSD rules. Such a PSD permit would have required the installation and continuous operation of Best Available Control Technology (BACT) for control of sulfur dioxide (SO₂) on Kiln #1. The underlying statutory and regulatory requirements include provisions of the Clean Air Act (CAA or the Act), its implementing regulations, and the Ohio State Implementation Plan (Ohio SIP).

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

Explanation of Violations

The following are the statutory and regulatory bases of the violations and how Martin Marietta violated these requirements.

Regulatory Authorities

NESHAP Background and Provisions

1. Section 112(b) of the CAA, 42 U.S.C. § 7412(b), as revised in 61 Fed. Reg. 30816 (June 18, 1996), lists 188 HAPs that cause adverse health or environmental effects.

2. Section 112(d)(1) of the CAA, 42 U.S.C. § 7412(d), requires the Administrator to promulgate regulations establishing emissions standards for each category or subcategory of major and area sources of HAPs, listed for regulation pursuant to subsection (c) and (e) of Section 112. These standards are known as National Emissions Standards for the Regulation of Hazardous Air Pollutants (NESHAPs).
3. Section 112(d)(2) of the Act requires that emission standards promulgated under Section 112(d)(1) require “the maximum degree of reduction in emissions of the HAP . . . that the Administrator, taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impacts and energy requirements, determine is achievable for new or existing sources in the category or subcategory to which such emission standard applies.” These are known as Maximum Achievable Control Technology (MACT) standards.
4. Section 112(f)(4) of the Act, 42 U.S.C. § 7412(f)(4), prohibits the emission of HAPs in violation of the promulgated emission standards.
5. On March 16, 1994, EPA promulgated the General Provisions for the Part 63 NESHAP standards at 40 C.F.R. Part 63, Subpart A, §§ 63.1 - 63.15. 59 Fed. Reg. 12408.
6. 40 C.F.R. § 63.1(a)(4)(i) provides that each MACT standard in 40 C.F.R. Part 63 “must identify explicitly whether each provision in this subpart A is or is not included in such relevant standard.”
7. 40 C.F.R. § 63.6(e)(1)(i) requires that at all times, including periods of startup, shutdown, and malfunction, the owner or operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions.
8. 40 C.F.R. § 63.7100(b) requires the facility to meet each operating limit in Table 2 of 40 C.F.R. Part 63, Subpart AAAAA, that applies to the facility.
9. 40 C.F.R. § 63.7090(c) requires the facility to maintain and operate the affected source in compliance with 40 C.F.R. § 63.6(e)(1)(i).
10. Table 2 of 40 C.F.R. Part 63, Subpart AAAAA, requires each lime kiln equipped with an electrostatic precipitator (ESP) maintain the ESP such that the 6-minute average opacity for any 6-minute block period does not exceed 15 percent.
11. Table 8 of 40 C.F.R. Part 63, Subpart AAAAA, titled “General Provisions Applicability to Subpart CC,” provides that Section 63.6(e) of the General Provisions applies to affected sources under Subpart CC (except for “Group 2 emission points”). Table 6

further provides that 40 C.F.R. § 63.11(b) applies to all affected sources regulated by Subpart CC.

Prevention of Significant Deterioration

12. Part C of Title I of the CAA 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 BACT.
13. Sections 110(a) and 161 of the CAA, 42 U.S.C. 7410(a) 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.
14. A state may comply with Sections 110(a) and 161 of the CAA by having its own PSD regulations approved as part of its SIP by EPA, provided they are at least as stringent as those set forth at 40 C.F.R. § 51.166.
15. 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 may be incorporated by reference into the SIP. 40 C.F.R. § 52.21(a).
16. On May 1, 1980, EPA disapproved Ohio's proposed PSD program and incorporated by reference the PSD regulations of 40 C.F.R. § 52.21(b) through (w) into the Ohio SIP. EPA also delegated to Ohio the authority to implement the federal PSD program incorporated into the Ohio SIP. 46 Fed. Reg. 9580 (January 29, 1981). *See* 40 C.F.R. § 52.1884.
17. On October 10, 2001, EPA conditionally approved revisions to the Ohio SIP to incorporate Ohio's PSD program, effective October 10, 2001. 66 Fed. Reg. 51570 (October 10, 2001). On January 22, 2003, EPA granted final approval for Ohio's PSD program, effective March 10, 2003. 68 Fed. Reg. 2909 (January 22, 2003).
18. OAC Rule 3745-31-01(LLL) and 40 C.F.R. § 52.21(b)(1)(i)(a) define 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 CAA. Lime plants are included among the 28 source categories.
19. OAC Rule 3745-31-01(JJJ) and 40 C.F.R. § 52.21(b)(2)(i) define 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 CAA.

20. OAC Rule 3745-31-01(TTT) and 40 C.F.R. § 52.21(b)(3)(i) define "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."
21. For SO₂, a significant net emissions increase is defined as any increase in SO₂ of 40 tons or more per year. OAC 3745-31-01(MMMM) and 40 C.F.R. § 52.21(b)(23)(i).
22. OAC Rule 3745-31-15 and 40 C.F.R. § 52.21(j)(3) require sources undertaking a major modification apply BACT for each regulated pollutant for which the modification would result in a significant net emissions increase at the source.
23. OAC Rule 3745-31-13 and 40 C.F.R. § 52.21(a)(2)(iii) [formerly 40 C.F.R. § 52.21(i)] provide that no major modification shall begin actual construction without a permit that states that the major modification will meet the requirements of OAC Rules 3745-31-01 through 3745-31-20, 40 C.F.R. § 52.21(j) through (r)(5).
24. Section 165(a)(1) of the CAA, 42 U.S.C. § 7475(a)(1), states that a facility shall comply with emission limitations within permits issued under, and conforming with, the requirements of Part C.

Ohio SIP

25. OAC Rule 3745-31-02(A) requires any person that installs a new source of air pollutants or modifies an air contaminant source to first obtain a permit to install (PTI) from the Ohio Environmental Protection Agency (Ohio EPA).
26. On May 27, 1994, EPA approved OAC Rule 3745-17-07, with an effective of June 27, 1994. 59 Fed. Reg. 27464.
27. OAC Rule 3745-17-07(A)(1)(a) limits visible particulate emissions from a stack to 20% opacity, as a 6-minute average, except as provided for at 3745-17-07(A)(1)(b).

Title V

28. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), states 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 the source except in compliance with its Title V permit.
29. EPA fully approved the Ohio Title V Permit program, effective October 1, 1995. 60 Fed. Reg. 42045 (August 15, 1995). Ohio's Title V Permit Program requirements are codified at OAC 3745-77.
30. No source subject to Title V may operate the source except in compliance with a Title V permit. 40 C.F.R. § 70.7(b).

Enforcement

31. Section 113(a) of the CAA, 42 U.S.C. § 7413(a), authorizes the Administrator to initiate an enforcement action whenever, on the basis of any available information, the Administrator finds that any person has violated or is in violation of a requirement or prohibition of, among others, any implementation plan or permit, Title I or Title V of the CAA, or any rule promulgated, issued or approved under Title I or Title V of the CAA.
32. Failure to comply with any provisions of this part, any approved regulatory provision of a State implementation plan, any permit condition, or with any permit limitation or condition contained within an operating permit, renders the person or governmental entity so failing to comply in violation of a requirement and subject to enforcement action under Section 113 of the CAA. 40 C.F.R. § 52.23.

Factual Findings

33. Martin Marietta Magnesia Specialties operates a lime plant facility at 755 Lime Road, Woodville, Sandusky County, Ohio (the facility).
34. At all times relevant to this matter, Sandusky County, Ohio was listed as attainment or unclassifiable for particulate matter (PM) and SO₂.
35. The facility is a major stationary source insofar as it has the potential to emit PM and SO₂ in excess of 100 tons per year. 40 C.F.R. § 52.21(b)(1)(i)(a) and OAC 3745-31-01(LL)
36. In 1982, the facility made a change in the method of operation at Kilns #1 and #2 to switch them from firing coal to firing petroleum coke (hereinafter "1982 Project").
37. The 1982 Project on Kilns #1 and #2 constitutes a modification to an air pollution source.

38. The 1982 Project resulted in an emissions increase of SO₂ above the significance threshold, thus making the project a major modification.
39. The facility failed to obtain any permits, conduct any modeling, or undergo any other sort of pre-construction review for this major modification.
40. Ohio EPA issued a Title V permit to Martin Marietta on June 20, 2003.
41. Among other requirements, the Title V permit limits visible particulate emissions from Kiln #1 to 20% opacity as a 6-minute average, except as provided for in OAC Rule 3745-17-07(A).
42. Attachment A, Table 1 to this NOV/FOV provides a summary of excess emissions reported by Martin Marietta as required by applicable regulations and its Title V permit.
43. Martin Marietta reported a total of 67,073 minutes of opacity excess emissions in its quarterly excess emission reports from the first quarter of 2006 to the third quarter of 2010 for Kiln #1.

Violations

44. Martin Marietta's failure to apply BACT to control emissions of SO₂ resulting from the 1982 Project is a continuing violation of Ohio SIP Rule 3745-31-15(D) and 40 C.F.R. § 52.21(j)(3).
45. Martin Marietta's failure to demonstrate that allowable emissions increases from the 1982 Project would not cause or contribute to air pollution in violation of any ambient air quality standard or applicable maximum allowable increase over the baseline concentration in any area is a violation of Ohio SIP Rule 3745-31-14(D) and 40 C.F.R. § 52.21(k).
46. The facility continuously violates PSD rules at OAC Rules 3745-31-01 through 3745-31-20 and 40 C.F.R. § 52.21(j) through (r) because it continues to operate its Kilns #1 and #2 without: (1) PSD PTIs; (2) BACT control equipment; and (3) demonstrating that the modifications described above did not cause a significant deterioration in air quality.
47. Martin Marietta's failure to obtain construction permits that meet the PSD requirements in Ohio SIP Rules 3745-31-01 through 3745-31-20 and 40 C.F.R. § 52.21(j) through (r) constitutes violations of Ohio SIP Rule 3745-31-13(A) and 40 C.F.R. § 52.21(a)(2)(iii).

48. The facility continuously violates OAC Rule 3745-31-02(A) because the foregoing project constitutes modifications without first obtaining a PTI from the director of Ohio EPA.
49. The facility continuously violates Title V permitting requirements at Section 503 of the CAA and 40 C.F.R. § 70.5, because it has yet to submit a complete application for a Title V operating permit for the Facility that identifies all applicable requirements, that accurately certifies compliance with such requirements, and that contains a compliance plan for all applicable requirements for which it is not in compliance.
50. The failure of Martin Marietta to meet the PSD requirements in the Ohio SIP and 40 C.F.R. § 51.21 as well as the Title V requirements constitute violations of the Act.
51. Martin Marietta failed to maintain continuous compliance with applicable opacity emission limits at Kiln #1 during calendar years 2006, 2007, 2008, 2009 and 2010.
52. Failure to maintain compliance with the 20 percent emission limit for opacity established in Martin Marietta's Title V permit is a violation of Martin Marietta's Title V permit; Section 502(a) of the CAA; 40 C.F.R. § 70.7; and OAC Rule 3745-17-07(A).
53. Failure to maintain compliance with the 15 percent emission limit for opacity established in the Lime MACT is a violation of 40 C.F.R. § 63.6(e)(1)(i); 40 C.F.R. § 63.7080 *et. seq.*; and Section 112(f)(4) of the CAA, 42 U.S.C. § 7412(f)(4).
54. By violating the conditions of its Title V permit, Martin Marietta has also violated 40 C.F.R. § 70.7(b) and Section 502(a) of the Act.
55. By violating the conditions of the SIP, Martin Marietta has violated Title I of the Act.

Environmental Impact of Violations

56. The purpose of a visible particulate limit is to help protect the public from unhealthy exposures to particulate. Particulate emissions, in particular fine particulate, contribute to respiratory problems, lung damage and premature deaths.
57. Violation of the SO₂ requirements increases the quantity of SO₂ in the environment. SO₂ causes severe respiratory problems and contributes to childhood asthma. SO₂ is a significant contributor to acid rain, visibility impairment, fine particulate matter formation and smog.

2/1/11

Date


Cheryl L. Newton
Director
Air and Radiation Division

Attachment A

Summary of Excess Emissions from Kiln 1 at Martin Marietta's Woodville, Ohio Facility

Unit	Quarter/year	Excess Emissions (Minutes)	Percent Excess Emissions (Minutes)	Source Operating Time (Min)
P015	Q1-2006	3,356		
	Q2-2006	2,550		
	Q3-2006	3,390		
	Q4-2006	2,475		
	Q1-2007	2,280	1.76%	129540
	Q2-2007	5,922	4.52%	131040
	Q3-2007	1,440	1.09%	132174
	Q4-2007	2,712	2.05%	132480
	Q1-2008	2,028	1.55%	131040
	Q2-2008	3,534	2.71%	130620
	Q3-2008	4,800	3.62%	132480
	Q4-2008	2,910	2.20%	132480
	Q1-2009	1,590	1.23%	129474
	Q2-2009	2,532	1.93%	131040
	Q3-2009	3,660	2.76%	132480
	Q4-2009	8,616	6.50%	132480
	Q1-2010	1,542	1.19%	129276
	Q2-2010	7,716	5.89%	131040
	Q3-2010	4,020	3.04%	132426
	Total	67,073	2.81%	1970070

CERTIFICATE OF MAILING

I, Betty Williams, certify that I sent a Notice of Violation and Finding of Violation, No. EPA-5-11-OH- 06 , by Certified Mail, Return Receipt Requested, to:

Joseph P. Montgomery
Martin Marietta Specialties, Inc.
755 Lime Road
Woodville, Ohio 43469

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

Bob Hodanbosi
Chief, Division of Air Pollution Control
Ohio Environmental Protection Agency
1800 WaterMark Drive
Columbus, Ohio 43266-1049

on the 4th day of February, 2011.


Betty Williams
Administrative Program Assistant
Planning and Administration Section

CERTIFIED MAIL RECEIPT NUMBER: 70091680000076701983