



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

SEP 21 2010

REPLY TO THE ATTENTION OF:

AE-17J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. John Kass
Plant Manager
Lone Star Industries, Inc.
d/b/a Buzzi Unicem USA, Inc.
Greencastle Cement Plant
3301 South County Road 150 West
Greencastle, Indiana 46135

RE: Notice and Finding of Violations issued to Lone Star Industries, Inc. d/b/a
Buzzi Unicem USA

Dear Mr. Kass:

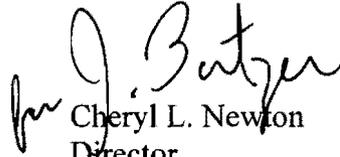
The U. S. Environmental Protection Agency is issuing the enclosed Notice of Violations and Finding of Violations (Notice) to Lone Star Industries, Inc. d/b/a Buzzi Unicem USA (Buzzi). This Notice is issued in accordance with Section 113(a) of the Clean Air Act (the Act), 42 U.S.C. § 7413(a).

EPA has determined that Buzzi is violating the following provisions of the Act at its Greencastle, Indiana Portland Cement plant: Prevention of Significant Deterioration requirements promulgated under Part C of the Act, 42 U.S.C. §§ 7470 *et seq.*; and Operating Permit requirements promulgated under Title V of the Act, 42 U.S.C. §§ 7661 *et seq.*

EPA is offering you an opportunity to confer with us about the violations cited in the Notice. The conference will give you an opportunity to present information on the specific findings of violations, and the steps you will take to bring the facility into compliance. Please plan for your technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference.

You may contact Mark Ackerman at (312) 353-4145 to request a conference. You should make your request for a conference no later than five calendar days after you receive this letter, and we should hold any conference within 15 calendar days of your receipt of this letter.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Cheryl L. Newton". The signature is written in a cursive style with a large initial "C".

Cheryl L. Newton
Director
Air and Radiation Division

Enclosure

cc: Phil Perry, Branch Chief
Compliance and Enforcement Branch
Office of Air Quality
Indiana Department of Environmental Management

Katherine D. Hodge, Esq.
Hodge Dwyer & Driver

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)	To Proceedings Pursuant
)	Section 113(a)(1) and (a)(3) of the
Lone Star Industries, Inc. d/b/a)	Clean Air Act,
Buzzi Unicem USA)	42 U.S.C. §7413(a)(1) and (a)(3)
Greencastle, Indiana)	EPA-5-10-19-IN
)	
)	
)	
)	
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NOTICE AND FINDING OF VIOLATION

This Notice and Finding of Violation (Notice) is issued to Lone Star Industries, Inc. d/b/a Buzzi Unicem USA(Buzzi), for violations of the Clean Air (the Act), 42 U.S.C. §§ 7401 *et seq.*, at Buzzi’s Portland Cement plant located in Greencastle, Indiana.

This Notice is issued pursuant to Sections 113(a)(1) and (a)(3) of the Act, 42 U.S.C. §§ 7413(a)(1) and (3). The authority to issue this Notice has been delegated to the Regional Administrator of U.S. EPA, Region 5, and redelegated to the Director, Air and Radiation Division.

STATUTORY AND REGULATORY BACKGROUND

1. The Clean Air Act is designed to protect and enhance the quality of the nation's air resources 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. §§51.9, 51.10.
4. Nitrogen oxides (NO_x) are precursors for ozone. See, e.g., Section 182(f) of the Clean Air Act, 42 U.S.C. § 7511a(f) and 40 C.F.R. 52.21(b)(50)(1),
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, Greencastle, Indiana, located in Putnam County, has been classified as attainment for ozone.

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 (PSD) of air quality in those areas designated as either attainment or unclassifiable for purposes of meeting the NAAQS standards. These PSD 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 that Portland Cement plants which emit or have the potential to emit one hundred tons per year or more of any air 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. Sections 110(a) and 161 of the Act, 42 U.S.C. §§ 7410(a) and 7471, require each state to adopt a state implementation plan (“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.

13. A state may comply with Sections 110(a) and 161 of the Act, 42 U.S.C. §§ 7410(a) and 7471, by having its own PSD regulations, which must be at least as stringent as those set forth at 40 C.F.R. § 51.166, approved by EPA as part of its SIP. If a state does not have a PSD program that has been approved by EPA and incorporated into its 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).

14. On August 7, 1980, EPA determined that the Indiana PSD rules did not satisfy the Act’s requirements, and disapproved them under Section 110(a)(3) of the Act, 42 U.S.C. § 7410(a)(3). At that same time, EPA incorporated the provisions of 40 C.F.R. § 52.21(b) through (w) into the Indiana State Implementation Plan (SIP). 45 Fed. Reg. 52676, 52741, as amended at 46 Fed. Reg. 9580 and codified at 40 C.F.R. § 52.793. On January 29, 1981, EPA delegated to the Indiana Department of Environmental Management (IDEM) the partial authority to review and process PSD permit applications, and to implement the federal PSD program. 46 Fed. Reg. 9580, 9583. On March 23, 2003, EPA conditionally approved into the Indiana SIP 326 IAC 2-2, which contains Indiana’s PSD regulations. 68 Fed. Reg. 9892, 40 C.F.R. § 52.770(c)(147). On May 20, 2004, EPA approved these rules into the Indiana SIP. 69 Fed. Reg. 29071, 40 C.F.R. § 52.770(c)(165). On June 18, 2007, EPA partially approved revisions to 326 IAC 2-2. 72 Fed. Reg. 33395

15. 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).

16. Under the PSD regulations, “major stationary source” is defined to include, *inter alia*, Portland Cement plants which emit or have the potential to emit one hundred tons per year or more of any regulated NSR pollutant. 40 C.F.R. § 52.21(b)(1)(i)(a).

17. Under the PSD regulations, a “regulated NSR pollutant” includes any pollutant for which a NAAQS has been promulgated and any constituents or precursors for such pollutants identified by EPA. This includes nitrogen oxides (NO_x), which are precursors for ozone. 40 C.F.R. 52.21(b)(50)(1).

18. 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 regulated NSR pollutant.

19. 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).

20. 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).

21. 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). In addition, for any emissions unit that “has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.” 40 C.F.R. § 52.21(b)(21)(iv).

22. 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].

23. Under the PSD regulations, if a source is a major stationary source in an attainment or unclassifiable area planning to construct a major modification under the foregoing definitions, then it is subject to the requirements of paragraphs (j) through (r) of 40 C.F.R. § 52.21. 40 C.F.R. § 52.21(a)(2)(ii).

24. 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).

25. No major stationary source to which the requirements of paragraphs (j) through (r) of 40 C.F.R. § 52.21 apply 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).

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

C. Federally Approved State Implementation Plan Regulatory Requirements

27. As referenced in Paragraph 14, above, 326 IAC 2-2 sets forth PSD provisions for Indiana. 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.

28. 326 IAC 2-2-2 of the Indiana SIP, 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 326 IAC 2-2-2, and the facility employs BACT for each pollutant subject to regulation that is emitted from the facility.

29. 326 IAC 2-2-1(gg)(1)(D) of the Indiana SIP states that Portland Cement plants that emit or have the potential to emit one hundred tons per year or more of any pollutant are “major emitting facilities.”

30. 326 IAC 2-2-1(p) of the Indiana SIP defines “construction” to include “modification.” “Modification” is defined in 326 IAC 2-2-1(ee)(1) to be “any physical change, or change in the method of operation, of a major stationary source that would result in a significant emission increase and a significant net emission increase of a regulated NSR pollutant from the major stationary source.”

D. Title V Program

1. Federal Title V Requirements

31. 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. EPA promulgated regulations governing the Federal operating permit program on July 1, 1996. *See* 61 Fed. Reg. 34228; 40 C.F.R. Part 71.

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

33. 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).

34. 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.” *See also* 326 IAC 2-7-5.

35. 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 . . .” *See also* 326 IAC 2-7-1(6).

36. 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. *See also* 326 IAC 2-7-3.

37. 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. *See also* 326 IAC 2-7-4(a) and (c).

38. 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. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.” *See also* 326 IAC 2-7-4(b).

2. Indiana’s Title V Requirements

39. EPA promulgated partial approval of the Indiana Title V program on December 14, 1995. *See* 60 Fed. Reg. 57188. EPA promulgated full approval of the Indiana Title V program on November 30, 2001. *See* 40 C.F.R. Part 70, Appendix A. Indiana’s Title V program became effective on this date. *See* 66 Fed. Reg. 62969.

40. The Indiana regulations governing the Title V permitting program are codified at 326 IAC 2-7 of the Indiana Administrative Code, and are federally enforceable pursuant to Section 113(a)(3).

41. 326 IAC 2-7-5 supports the requirement at 40 C.F.R. § 70.1(b) that “All sources subject to these regulations shall have a permit to operate that assures compliance by the

source with all applicable requirements.”

42. 326 IAC 2-7-3 supports the requirement at 40 C.F.R. § 70.7(b) that no source subject to 40 C.F.R. Part 70 requirements may operate without a permit as specified in the Act.

43. 326 IAC 2-7-4(a) and (c) support the requirements at 40 C.F.R. § 70.5(a) and (c) to submit 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.

44. 326 IAC 2-7-4(b) supports the requirement at 40 C.F.R. § 70.5(b) 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

45. Buzzi is a corporation authorized to do business in Indiana.

46. Buzzi is a “person,” as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

47. At all times relevant to this Notice, Buzzi has been the owner and/or operator of a Portland Cement plant, located in Greencastle, Indiana (the Buzzi plant), at which it operates a semi-dry kiln for clinker production.

48. The Buzzi plant is located in Putnam County, which at all times relevant to this Notice was classified as attainment for ozone.

49. Buzzi is a major stationary source under 40 C.F.R. § 52.21(b)(1)(i)(a) in that it has the potential to emit several regulated NSR pollutants, including NO_x, in excess of 100 tons per year.

50. At all times relevant to this Notice, Buzzi made various physical changes subject to the PSD regulations. A description of the changes is included in Appendix A.

51. Buzzi failed to obtain the required permits, conduct any modeling, or undergo any other sort of pre-construction review for the changes identified in Appendix A.

FINDING OF VIOLATIONS

52. The activities described in Appendix A are major modifications that caused a significant net emissions increase of NO_x within the meaning of the Clean Air Act and the PSD requirements, 40 C.F.R. § 52.21 and 326 IAC 2-2. Buzzi failed to apply for and/or obtain a PSD permit prior to beginning actual construction of such activities. Buzzi violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), 40 C.F.R. § 52.21 and 326 IAC 2-2 by beginning actual construction of, and continuing to operate, a major modification at Buzzi plant without applying for and obtaining a PSD permit. 42 U.S.C. § 7475(a), 40 CFR §§ 52.21(i)(1) and 52.21(r)(1) and 326 IAC 2-2. Buzzi did not install BACT for the control of NO_x prior to beginning actual construction of such activities, and continues to operate the Buzzi plant without BACT. Buzzi violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), 40 C.F.R. § 52.21 and 326 IAC 2-2 by failing to install and operate BACT for this pollutant.

53. Since Buzzi has failed to submit a timely, accurate, and complete Title V permit application for the Buzzi plant with information pertaining to the modifications identified in Appendix A 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 Buzzi plant and also failed to supplement or correct the Title V permit application for the Buzzi plant 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 Indiana Title V provisions at 326 IAC 2-7.

ENFORCEMENT PROVISIONS

54. 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, on the basis of any information available to the Administrator, 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); Title V of the Act, 42 U.S.C. §§ 7661-7661f, or any rule or permit issued thereunder; or the PSD provisions of the Indiana SIP. *See also* 40 C.F.R. § 52.23.

55. Section 113(b) of the Act, 42 U.S.C. § 7413(b), authorizes the Administrator to initiate a judicial enforcement action for a permanent or temporary injunction, and/or for a civil penalty of up to \$25,000 per day for each violation occurring on or before January 30, 1997; up to \$27,500 per day for each such violation occurring on or after January 31, 1997 and up to and including March 15, 2004; up to \$32,500 per day for each such violation occurring on or after March 16, 2004 through January 12, 2009; and up to \$37,500 per day for each such violation occurring on or after January 13, 2009, 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), against any person whenever such person has violated, or is in violation of, *inter alia*, the requirements or prohibitions described in the preceding paragraph.

56. 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.

9/21/10

Date



Cheryl L. Newton
Director
Air and Radiation Division

CERTIFICATE OF MAILING

I, Betty Williams, certify that I sent a Notice of Violation and Finding of Violation, No. **EPA-5-10-19-IN**, by Certified Mail, Return Receipt Requested, to:

Mr. John Kass
Plant Manager
Lone Star Industries, Inc.
d/b/a Buzzi Unicem USA
Greencastle Cement Plant
3301 South County Road 150 West
Greencastle, Indiana 46135

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

Phil Perry, Branch Chief
Office of Air Quality
Compliance and Enforcement Branch
Indiana Department of Environmental Management
100 North Senate Avenue Room IGCN 1003
Indianapolis, Indiana 46204-2251
Excluding Appendix A

Katherine D. Hodge Esq.
HODGE DWYER & DRIVER
3150 Roland Avenue
P.O. Box 5776
Springfield, Illinois 62705-5776
Excluding Appendix A

On the 22nd day of September, 2010



Betty Williams
Administrative Program Assistant
AECAS IL/TN

Certified Mail Receipt Number: 7001 0320 0005 8915 9464