



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAR 24 2011

REPLY TO THE ATTENTION OF:
AE-17J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Pat Gallo
Environmental Manager
AK Steel Corporation, Middletown Works
1801 Crawford Street
Middletown, Ohio 45043

Dear Mr. Gallo:

This is to advise you that the U.S. Environmental Protection Agency ("EPA") has determined that AK Steel Corporation, Middletown Works ("AK Steel" or "facility") located at 1801 Crawford Street, Middletown, Ohio is in violation of the provisions of the Clean Air Act (the "Act") regarding the Prevention of Significant Deterioration ("PSD"), as well as the Ohio State Implementation Plan ("SIP") and the Title V permit program implemented under the terms of the Act. We are today issuing to you a Notice and Finding of Violations ("NOV/FOV") for these violations.

Our evidence for these violations derives from several sources. On April 20, 2009, and August 3, 2009, EPA issued two information requests to AK Steel regarding its sulfuric acid plant and coke oven plant. From November 30, 2010, to December 2, 2010, EPA inspected the facility. In addition, EPA obtained reports from the Hamilton County Department of Environmental Services ("HAMCO") regarding AK Steel's plant. The EPA inspection, AK Steel's responses to the information requests, and HAMCO's reports revealed that AK Steel has not properly controlled air emissions—specifically, emissions of sulfur dioxide ("SO₂")—from its Wilputte Battery since the shutdown of the sulfuric acid plant in early 2001. AK Steel operated the sulfuric acid plant as pollution prevention equipment, minimizing SO₂ emissions from the Wilputte Battery. Because the shutdown of the sulfuric acid plant resulted in a significant increase in SO₂ emissions from the Wilputte Battery, AK Steel was required to apply for and obtain a PSD permit for its Wilputte Battery prior to shutdown of the sulfuric acid plant.

Section 113 of the Act, 42 U.S.C. § 7413, gives EPA several enforcement options to resolve these violations, including issuing an administrative compliance order, issuing an administrative penalty order, bringing a civil judicial action, and bringing a criminal action. EPA is offering you 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 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 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.

EPA's contact in this matter is Reza Bagherian. If you wish to request a conference, you may call him at (312) 886-0674. EPA hopes that this NOV/FOV will encourage AK Steel's compliance with the requirements of the Act.

Sincerely,



Cheryl L. Newton

Director

Air and Radiation Division

Enclosure

cc: Brad Miller
Hamilton County Department of Environmental Services

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)	
)	
AK Steel Corporation, Middletown Works)	Proceedings Pursuant to Section 113(a)(1) and (a)(3) of the Clean Air Act, 42 U.S.C. § 7413(a)(1) and (a)(3)
1801 Crawford Street)	
Middletown, Ohio 45043)	
)	
)	EPA-5-11-OH-07
)	
)	

NOTICE AND FINDING OF VIOLATIONS

The U.S. Environmental Protection Agency is issuing this Notice and Finding of Violations (“NOV/FOV”) to AK Steel Corporation, Middletown Works (“AK Steel” or “facility”) for violation of the Clean Air Act (the “Act”), including: Section 110 of the Act, 42 U.S.C. 7410; Section 165 of the Act, 42 U.S.C. § 7475; Title V of the Act, 42 U.S.C. §§ 7661a and 7661b; the Prevention of Significant Deterioration (“PSD”) regulations; the Ohio State Implementation Plan (“SIP”); and the Title V permit program implemented under the Act at the AK Steel facility located at located at 1801 Crawford Street, Middletown, Ohio.

I. STATUTORY AND REGULATORY BACKGROUND

A. Prevention of Significant Deterioration and Ohio State Implementation Plan Requirements

1. On June 19, 1978, U.S. EPA promulgated the prevention of significant deterioration of air quality standards (the “PSD regulations”) pursuant to Subchapter I, Part C of the Act, 43 Fed. Reg. 26403 (June 19, 1978). These regulations were revised on August 1, 1980, (45 Fed. Reg. 52676) and December 31, 2002, (67 Fed. Reg. 80186), and are codified at 40 C.F.R. § 52.21.

2. Subchapter I, Part C of the Act, 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 (1) the modification is “major” because it will result in a “significant net increase” in emissions of a regulated New Source Review (“NSR”) pollutant, and (2) if the source is located in an area which has either achieved the National Ambient Air Quality Standards (“NAAQS”) for that pollutant or has been designated as unclassifiable for that pollutant. Part C and its implementing regulations further require that a source subject to the PSD regulations must install Best Available Control Technology (“BACT”) to control the emissions of each regulated NSR pollutant. 40 C.F.R. § 52.21(j).

3. 40 C.F.R. § 52.21(a)(2) states, in part, that the PSD regulations, including the requirement to obtain a PSD permit prior to beginning actual construction, apply to the major modification of any existing major stationary source in an area designated as attainment or unclassifiable.

4. 40 C.F.R. § 52.21(b)(1)(i)(a) defines a “major stationary source” as any source, including iron and steel mills, which emits or has the potential to emit 100 tons per year or more of a regulated NSR pollutant, which includes, with limited exceptions, any pollutant subject to the regulation under the Act. Particulate matter (“PM”), sulfur dioxide (“SO₂”), carbon monoxide (“CO”), and nitrogen oxides (“NO_x”) are regulated NSR pollutants subject to regulation under the Act.

5. 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 emissions increase of a regulated NSR pollutant.

6. 40 C.F.R. § 52.21(b)(23)(i) defines a significant net emissions increase, in part, as a rate of emissions that would equal or exceed 40 tpy of SO₂.

7. 40 C.F.R. § 52.21(i)(1) provides that “no stationary source or modification to which the requirements of paragraphs (j) through (r) of this section apply shall begin actual construction without a permit that states that the stationary source or modification would meet those requirements.”

8. 40 C.F.R. § 52.21(i)(2) provides that “the requirements of paragraphs (j) through (r) of this section apply to any major stationary source and any major modification with respect to each pollutant subject to regulation under the Act.”

9. 40 C.F.R. § 52.21(n) states that an applicant for a permit to modify a stationary source is required to provide all relevant information to allow the permitting authority to perform an analysis or make the determination required to issue the appropriate permit.

10. 40 C.F.R. § 52.21(a)(2)(iii) prohibits the actual construction or major modification of a major stationary source without a permit which states that the major stationary source or modification would meet the requirements of 40 C.F.R. §§ 52.21(j) through (r).

11. 40 C.F.R. § 52.21(r) states that any owner or operator of a source subject to the PSD regulations who operates a source or modification without applying for and receiving approval under the PSD regulations is subject to enforcement action.

12. 40 C.F.R. § 52.23 states, among other things, that a person’s failure to comply with any approved regulatory provision of a SIP renders the person in violation of a requirement of an applicable implementation plan and subject to enforcement action under Section 113 of the Act.

13. A State is required to adopt a state implementation plan (“SIP”) containing regulations to implement the PSD provisions. See Section 110(a) and 161 of the Act, 42 U.S.C. §§ 7410(a) and 7471.

14. A state may comply with Sections 110(a) and 161 of the Act by having its own PSD regulations approved by EPA as part of its SIP, which must be at least as stringent as those set forth at 40 C.F.R. § 51.166.

15. If a state does not have PSD regulations that have 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 into the SIP. 40 C.F.R. § 52.21(a).

16. Effective October 10, 2001, EPA conditionally approved and incorporated Ohio's PSD regulations into the Ohio SIP. 66 Fed. Reg. 51570. On January 22, 2003, EPA fully approved Ohio's PSD SIP regulations. 68 Fed. Reg. 2909. The Ohio PSD regulations currently are codified at Ohio Administrative Code (“OAC”) §§ 3745-31-11 to 3745-31-20.

17. OAC § 3745-31-02(A)(1) states that no person shall cause, permit, or allow the installation of a new source of air pollutants or allow the modification of an air containment source without first obtaining a permit to install (“PTI”) from the director of the Ohio Environmental Protection Agency (“Ohio EPA”).

18. OAC § 3745-31-05(A)(3) states that the director of the Ohio EPA will issue a PTI only if he determines that the installation or modification and operation of the air contaminant source will employ best available technology (“BAT”).

19. OAC § 3745-31-15(D) states that the owner or operator of a new major modification shall apply BAT for each regulated air pollutant that would be a significant net emissions increase at the stationary source.

20. OAC § 3745-31-16(B) states that any owner or operator of a proposed major stationary source or major modification shall demonstrate that allowable emissions increases from the proposed major stationary source or major modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions), would not cause or contribute to air pollution in violation of: (1) Any national ambient air quality standard; or (2) Any applicable maximum allowable increase over the baseline concentration (allowable increment) in any attainment area.

B. Title V Permit Requirements

21. 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.

22. 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.

23. 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 SIP.

24. 40 C.F.R. § 70.1(b) provides that: “[a]ll sources subject to these regulations shall have a permit to operate that assures compliance by the source with all applicable requirements.”

25. 40 C.F.R. § 70.2 defines “applicable requirement” to include “...[a]ny 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....”

26. 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.

27. 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.

28. 40 C.F.R. § 70.5(b) provides that “[a]ny 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.”

29. EPA approved Ohio's Title V operating program on August 15, 1995. 60 Fed. Reg. 42045. Ohio's Title V operating permit regulations are codified at OAC Chapter 3745-77, and are federally enforceable under Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3).

30. A source subject to the Title V operating permit program shall not operate the source after the date that a timely and complete Title V permit application is required to be submitted, except in compliance with a Title V operating permit. OAC § 3745-77-02(A). *See also* 40 C.F.R. § 70.1(b) (“All sources subject to these regulations shall have a permit to operate that assures compliance by the source with all applicable requirements.”)

31. A Title V operating permit shall include emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at time of issuance. OAC § 3745-77-07(A); *see also* 40 C.F.R. § 70.1(b).

32. The owner or operator of a source subject to the Title V operating permit program is required to submit an application that includes, among other things, a citation to and description of all applicable requirements. OAC § 3745-77-03(A); *see also* 40 C.F.R. § 70.5.

33. 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. OAC § 3745-77-03(F), *see also* 40 C.F.R. § 70.5.

II. FACTUAL BACKGROUND

34. AK Steel owns and operates an integrated steel-producing facility located at 1801 Crawford Street, Middletown, Ohio (“facility”).

35. At its Middletown facility, AK Steel owns and operates a coke oven battery, among other emission sources, known as the Wilputte Battery.

36. The Wilputte Battery produces coke, which is coal purged of many of its impurities.

37. AK Steel’s Wilputte Battery is a short by-product coke oven battery, because its ovens are less than 6 meters (20 feet) in height.

38. On November 1, 2004, Ohio Environmental Protection Agency issued to AK Steel a Title V operating permit, Facility I.D. # 14-09-01-0006.

39. On May 16, 1996, AK Steel sent a letter to HAMCO presenting two sets of SO₂ emissions data in support of its argument for the reclassification of the status of the sulfuric acid plant from an emissions source to pollution prevention equipment. AK Steel stated that the Wilputte Battery operating at maximum rate in conjunction with the operation of the sulfuric acid plant would emit a combined total of 515 pounds of SO₂ per hour, while operation of the Wilputte Battery alone at maximum rate would emit 1,433 pounds of SO₂ per hour.

40. In correspondence from June and July of 1996, HAMCO agreed with AK Steel’s characterization of its sulfuric acid plant—formerly considered to be an emissions source—as pollution prevention equipment that minimized SO₂ emissions from the Wilputte Battery.

41. On April 20, 2009, and August 3, 2009, EPA issued two information requests to AK Steel under Section 114 of the Act.

42. In AK Steel’s August 26, 2009, response to EPA’s request for information, AK Steel stated that its sulfuric acid plant was shut down in early 2001.

43. In AK Steel’s September 25, 2009, response to EPA’s request for information, AK Steel provided actual SO₂ emission data from the Wilputte Battery and related SO₂ emission data from the sulfuric acid plant for the period between 1993 and 2003.

44. After the shutdown of the sulfuric acid plant in early 2001, actual SO₂ emissions from the Wilputte Battery increased from 656 tpy in 1999 and 916 tpy in 2000 to 1,120 tpy in 2001 and 1,170 tpy in 2002. During the same period, the potential SO₂ emissions from the Wilputte Battery increased from 2,256 tpy to 6,276 tpy.

45. From November 30, 2010, to December 2, 2010, EPA inspected the AK Steel facility, including the Wilputte Battery.

46. AK Steel's Title V operating permit, Facility I.D. # 14-09-01-0006, did not contain, and was not updated to contain, the applicable PSD requirements related to the 2001 shutdown of the sulfuric acid plant.

47. At all times relevant to this NOV/FOV, the AK Steel facility was located in an area that was classified as attainment or unclassifiable for SO₂.

III. VIOLATIONS

48. AK Steel violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), 40 C.F.R. § 52.21(i)(1), and OAC Rule 3745-31-02(A) because it has failed to obtain a PSD permit and continues to operate the modified source without installing BACT, or undergoing PSD review and installing appropriate emission control equipment in accordance with BACT requirements.

49. By not updating its Title V operating permit, Facility I.D. # 14-09-01-0006, to contain the applicable PSD requirements triggered by the 2001 shutdown of the sulfuric acid plant, AK Steel violated federal regulations at 40 C.F.R. § 70.5(b) and OAC § 3745-77-03.

IV. ENFORCEMENT AUTHORITY

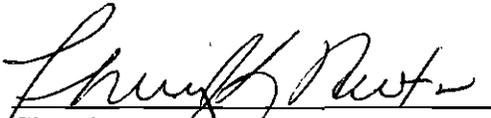
50. Sections 113(a)(1) and (3) of the Act, 42 U.S.C. § 7413(a)(i) and (3), provide that the Administrator may bring a civil action in accordance with Section 113(b) of the Act, 42 U.S.C. § 7413(b), whenever, on the basis of any information available to the Administrator, the Administrator finds that 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 provisions of the Ohio SIP, including its PSD requirements. See also 40 C.F.R. § 52.23.

51. Section 113(b) of the Act, 42 U.S.C. § 7413(b), authorizes the Administrator to initiate 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.

52. 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.

3/24/11
Date


Cheryl L. Newton
Director
Air and Radiation Division

CERTIFICATE OF MAILING

I, Betty Williams, certify that I sent a Notice and Finding of Violations, Docket Number EPA-5-11-OH-07, by Certified Mail, Return Receipt Requested, to:

Pat Gallo
Environmental Manager
AK Steel Corporation, Middletown Works
1801 Crawford Street
Middletown, Ohio 45043

I also certify that I sent a copy of the Notice and Finding of Violations, Docket Number EPA-5-11-OH-07, by First Class Mail to:

Brad Miller
Hamilton County Department of Environmental Services
Air Quality Programs
250 William Howard Taft Road
Cincinnati, OH 45219

Robert Hodanbosi, Chief
Division of Air Pollution Control
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, Ohio 43138

on the 24th day of March 2011.


Betty Williams
Administrative Program Assistant
AECAB/AECAS/PAS

Certified Mail Receipt Number: 7009 1680 0000 7670 2355