



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

SEP 13 2011

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Joel Dykema
Dykema Excavators, Inc.
1730 Three Mile Road, N.E.
Grand Rapids, Michigan 49505

Re: Notice and Finding of Violation

Dear Mr. Dykema:

The U.S. Environmental Protection Agency is issuing the enclosed Notice and Finding of Violation (NOV/FOV) to Dykema Excavators, Inc., ("Dykema" or "you") under Section 113(a)(1) and (3) of the Clean Air Act, 42 U.S.C. § 7413(a)(1) and (3). We find that you have violated the New Source Performance Standards of the Clean Air Act (NSPS) 40 C.F.R. Part 60, General Provisions and Subpart OOO, and the Michigan State Implementation Plan (SIP), at your Grand Rapids, Michigan facility.

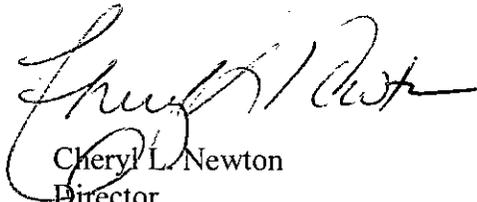
Section 113 of the Clean Air Act gives us several enforcement options. These options include issuing an administrative compliance order, issuing an administrative penalty order, and bringing a judicial civil or criminal action.

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 EPA contact in this matter is Katharina Bellairs. You may call her at (312) 353-1669 to request a conference. You should make the request within 10 calendar days following receipt of this letter. We should hold any conference within 30 calendar days following receipt of this letter.

Sincerely,

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

Cheryl L. Newton
Director
Air and Radiation Division

Enclosure

cc: Heidi Hollenbach, Grand Rapids District Supervisor, MDEQ
Thomas Hess, Enforcement Unit Supervisor, MDEQ

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

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|----------------------------------|---|--|
| IN THE MATTER OF: |) | |
| Dykema Excavators, Inc. |) | NOTICE and FINDING OF VIOLATION |
| Grand Rapids, Michigan |) | EPA-5-11-MI-10 |
| |) | |
| Proceedings Pursuant to |) | |
| Section 113(a)(1) and (3) of the |) | |
| Clean Air Act, 42 U.S.C. |) | |
| § 7413(a)(1) and (3) |) | |

NOTICE AND FINDING OF VIOLATION

The U.S. Environmental Protection Agency (EPA) is issuing this Notice and Finding of Violation (NOV/FOV) under Section 113(a)(1) and (3) of the Clean Air Act, 42 U.S.C. § 7413(a)(1) and (3) (Act). EPA finds that Dykema Excavators, Inc. (Dykema) violated the Michigan State Implementation Plan (SIP) and the New Source Performance Standards (NSPS) of the Act, 42 U.S.C. § 7411(e), and the regulations promulgated thereunder at 40 C.F.R. Part 63, Subpart OOO, as follows:

Statutory and Regulatory Background

Michigan State Implementation Plan

1. 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 implementation, maintenance, and enforcement of the National Ambient Air Quality Standards (NAAQS). Pursuant to Section 113(a) and (b) of the Act, 42 U.S.C. § 7413(a) and (b), upon EPA approval, SIP requirements are federally enforceable under Section 113.
2. On May 6, 1980, EPA approved Michigan Rule 336.1201 as part of the federally enforceable Michigan SIP. 45 Fed. Reg. 29790 (May 6, 1980).
3. R 336.1201 of the Michigan SIP states, "a person shall not install, construct, reconstruct, relocate, or alter any process, fuel-burning, or refuse-burning equipment, or control equipment pertaining thereto, which may be a source of an air contaminant, until a permit is issued by the commission. This shall be known as a permit to install and shall cover construction, reconstruction, relocation, and alteration of equipment where such is involved."
4. "Process" or "process equipment" means "any equipment, device, or contrivance and all appurtenances thereto, for the changing any materials ... the use of which may cause

discharge of an air contaminant into the outer air,” as defined in R 336.1116(n), General Provisions Definitions, which is part of the federally enforceable SIP for Michigan. 57 Fed. Reg. 24752 (June 11, 1992).

5. The Michigan SIP defines “air contaminant” as “a dust, fume, gas, mist, odor, smoke, vapor any combination thereof.” R 336.1101(c) and 57 Fed. Reg. 24752 (June 11, 1992).
6. “Particulate matter” means any air contaminant existing as a finely divided liquid or solid other than uncombined water, as measured by a reference test specified in R336.2004(5) or by an equivalent or alternative method. R 336.116(b) and 57 Fed. Reg. 24752 (June 11, 1992).

New Source Performance Standards

7. On December 23, 1971, under Section 111(b) of the Act, 42 U.S.C. § 7411(b), EPA promulgated the NSPS General Provisions at 40 C.F.R. Part 60, Subpart A. 36 Fed. Reg. 24877 (December 23, 1971). 40 C.F.R. Part 60, Subpart A, applies to the owner or operator of any stationary source which contains an affected facility, the construction or modification of which is commenced after the date of publication in this part of any standard.
8. On August 1, 1985, EPA promulgated the “Standards of Performance for Nonmetallic Mineral Processing Plants,” codified at 40 C.F.R. Part 60, Subpart OOO, 51 Fed.Reg. 31337, amended at 54 Fed.Reg. 6680 (February 14, 1989).
9. A “stationary source” under the NSPS means “any building, structure, facility, or installation which emits or may emit any air pollutant.” 40 C.F.R. § 60.2.
10. An “affected facility” under the NSPS means, with reference to a stationary source, any apparatus to which a standard is applicable. 40 C.F.R. § 60.2.
11. Subpart OOO applies to the following affected facilities, which commenced construction, reconstruction, or modification after August 31, 1983, in fixed or portable nonmetallic mineral processing plants: each crusher, grinding mill, screening operation, bucket elevator, belt conveyor, bagging operation, storage bin, enclosed truck or railcar loading station.
12. An “owner or operator” under the NSPS means any person who owns, leases, operates, controls, or supervises an affected facility or a stationary source of which an affected facility is a part. 40 C.F.R. § 60.2.
13. “Startup” under the NSPS means “the setting in operation of an affected facility for any purpose.” 40 C.F.R. § 60.2.
14. The NSPS, at 40 C.F.R. § 60.7(a)(3) and at 40 C.F.R. § 60.676(i), requires owners or operators subject to the NSPS to furnish to the Administrator a written notification of the actual date of initial startup of an affected facility, postmarked within 15 days after such date. 40 C.F.R. § 60.676(i)(2) states that for portable aggregate processing plants, the notification shall include both the home office and the current address or location of the portable plant.

15. Under 40 C.F.R. § 60.4 and 40 C.F.R. § 60.676(k), the written notifications described in Paragraph 14, above, are to be submitted to the Michigan Department of Environmental Quality (MDEQ), as the state which has been delegated authority according to 40 C.F.R. § 60.4(b).

Factual Background

16. At all times relevant to this NOV/FOV, Dykema was the owner and/or operator of a portable nonmetallic mineral processing plant (facility) headquartered in Grand Rapids, Michigan.
17. The facility commenced construction and operation after August 31, 1983, and is therefore subject to the NSPS General Provisions at 40 C.F.R. Part 60, Subpart A, and the Standards of Performance for Nonmetallic Mineral Processing Plants, codified at 40 C.F.R. Part 60, Subpart OOO.
18. Dykema's portable nonmetallic mineral processing plant is a "portable aggregate processing plant" within the meaning of 40 C.F.R. § 60.676(i)(2).
19. Dykema is a "person," as that term is defined in R 336.1116(g), General Provisions Definitions, which is part of the federally enforceable SIP for Michigan. 57 Fed. Reg. 24752 (June 11, 1992).
20. Dykema's portable nonmetallic mineral processing equipment is "process equipment," as that term is defined in R 336.1116(n). 57 Fed. Reg. 24752 (June 11, 1992).
21. Each of the stationary sources at Dykema's portable nonmetallic mineral processing plant emits or may emit particulate matter (PM), an air contaminant under the Michigan SIP and a criteria pollutant under the Act. 69 Fed. Reg. 63111 (October 29, 2004).
22. Dykema's portable nonmetallic mineral process is a "process" subject to R 336.1201 of the Michigan SIP.
23. MDEQ issued to Dykema a Permit to Install, Permit Number 290-00, on September 7, 2000.
24. Since 2005, Dykema has relocated its portable nonmetallic mineral processing plant among the three locations listed below:
 - a. Plant 16; 1405 Taylor Road, Jenison, Michigan
 - b. Plant 18; 3800 Seven-Mile Road, Belmont, Michigan
 - c. Georgia Pacific, 3401 Veterans Memorial Highway, Walker, Michigan
25. On January 1, 2005, Dykema's nonmetallic mineral processing plant was located at Plant 16. Since that time, it relocated to the locations listed below on the dates listed:
 - a. Plant 18; May 9, 2005
 - b. Georgia Pacific; October 24, 2005
 - c. Plant 18; May 12, 2006

- d. Georgia Pacific; November 6, 2006
 - e. Plant 18; May 4, 2007
 - f. Georgia Pacific; September 10, 2008
 - g. Plant 18; June 25, 2009
 - h. Georgia Pacific; September 21, 2009
 - i. Plant 18; May 24, 2010
26. Each relocation constituted a "startup" as defined in 40 C.F.R. §§ 60.2 and 60.676(i)(2), requiring written notification to the Administrator of EPA or the MDEQ.
27. Each relocation of Dykema's nonmetallic mineral processing plant required a Permit to Install under Michigan SIP R 336.1201.

Violations

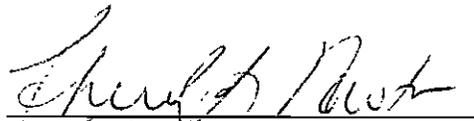
28. Dykema violated the NSPS at 40 C.F.R. §§ 60.7(a)(3) and 60.676(i) because the company did not provide MDEQ a notification of the date of initial startup after each relocation of the nonmetallic mineral processing plant, listed in Paragraph 25, above. Each failure to notify MDEQ of the date of initial startup of an affected facility is a separate violation of 40 C.F.R. §§ 60.7(a)(3) and 60.676(i).
29. Dykema violated the Michigan SIP at Rule 336.1201 because the company did not submit an application for a Permit to Install to MDEQ before initial startup after each relocation of the nonmetallic mineral processing plant, listed in Paragraph 25, above. Each failure to submit a Permit to Install application is a separate violation of the Michigan SIP at Rule 336.1201.

Environmental Impact of Violations

30. Excess emissions of particulate matter primarily affect the health of people and animals through inhalation. The smaller the particles, the deeper they may penetrate into the respiratory tract. Acute respiratory effects of inhalation of particulates include narrowing of the airways and asthma attacks. Chronic respiratory effects include damage to lung tissue, increased pulmonary resistance, and fibrotic changes in lung tissue. Increased pulmonary resistance and fibrosis may lead to cardiovascular impairment. Premature death is associated with exposure to particulates. The elderly, children, and people with chronic lung disease, influenza, or asthma tend to be especially sensitive to the effects of particulate matter.

Dated: _____

9/13/11



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-5-11-MI-10 by Certified Mail, Return Receipt Requested, to:

Joel Dykema
Dykema Excavators, Inc.
1730 Three Mile Road, N.E.
Grand Rapids, Michigan 49505

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

Heidi Hollenbach, District Supervisor
Grand Rapids District Office
Michigan Department of Environmental Quality
State Office Building, 5th Floor
350 Ottawa Avenue NW, Unit 10
Grand Rapids, Michigan 49503-2341

Tom Hess, Chief
Michigan Department of Natural Resources and Environment
Air Quality Division
P.O. Box 30260
Lansing, Michigan 48909

on the 14th day of September, 2011.



Betty Williams,
Administrative Program Assistant
Planning and Administration Section

CERTIFIED MAIL RECEIPT NUMBER: 7009 1680 0000 7672 7679