



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

DEC 16 2014

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Andrew Roebel
Air Compliance
Duke Energy
139 East Fourth Street, EM740
Cincinnati, Ohio 45202

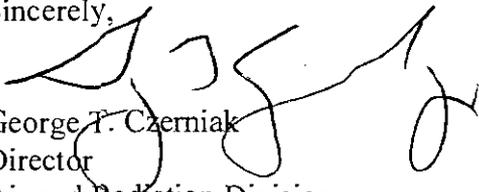
Dear Mr. Roebel:

The U. S. Environmental Protection Agency is issuing the enclosed Notice of Violation and Finding of Violation (NOV/FOV) to Duke Energy Corporation (Duke) to notify Duke that it has violated and continues to be in violation of the Clean Air Act (CAA), its implementing regulations, the Ohio State Implementation Plan, New Source Performance Standards, and its Title V Operating Permit at William H. Zimmer Generating Station, located in Moscow, Ohio (Zimmer Station). This NOV/FOV is issued in accordance with Section 113(a) of the CAA, 42 U.S.C. § 7413(a) and updates, but does not supersede, the NOV/FOVs issued to Duke on or about March 10, 2008 and November 4, 2010.

EPA is offering you an opportunity to confer with us about the violations cited in the attached NOV/FOV. The conference will give you an opportunity to present information on the specific findings of violations and the steps you will take to bring Zimmer Station into compliance. In addition, in order to make the conference more productive, we encourage you to submit to us information responsive to the NOV/FOV prior to the conference date. Please plan for your technical and management personnel to attend the conference to discuss compliance measures and commitments. You may also have an attorney represent you at this conference.

The EPA contact in this matter is Ms. Sabrina Argentieri, Associate Regional Counsel. Your attorney may call her at (312) 353-5485 to request a conference. You should make your request for a conference no later than 10 calendar days after you receive this letter, and we should hold any conference within 30 calendar days of your receipt of this letter. EPA encourages your prompt response to bring your facility into compliance with the requirements of the CAA.

Sincerely,


George T. Czerniak
Director
Air and Radiation Division

Enclosure

cc: Robert Hodanbosi, Chief
Division of Air Pollution Control
Ohio Environmental Protection Agency

Mike Kramer, Supervisor
Permits and Enforcement Section
Hamilton County Department of Environmental Service

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)
)
Duke Energy Corporation) **Notice of Violation and**
William H. Zimmer Generating Station) **Finding of Violation**
Moscow, Ohio)
) **EPA-5-15-OH-6**
Proceedings Pursuant to)
the Clean Air Act)
42 U.S.C. §§7401 *et seq.*)
)

NOTICE OF VIOLATION AND FINDING OF VIOLATION

The U.S. Environmental Protection Agency (EPA) is issuing this Notice of Violation and Finding of Violation (NOV/FOV) in accordance with Section 113(a) of the Clean Air Act (CAA), 42 U.S.C. § 7413(a). The authority to issue this NOV/FOV has been delegated to the Regional Administrator of the EPA, Region 5, and redelegated to the Director, Air and Radiation Division. This NOV/FOV updates, but does not supersede, the previous NOV/FOVs issued to Duke Energy Corporation (Duke Energy) on or about March 10, 2008 and November 4, 2010.

EPA finds that Duke Energy has violated and continues to violate the CAA, 42 U.S.C. §§ 7401 *et seq.*, its implementing regulations, the Ohio State Implementation Plan (SIP), New Source Performance Standards (NSPS), and its Title V Operating Permit at William H. Zimmer Generating Station, located in Moscow, Ohio (Zimmer Station).

STATUTORY AND REGULATORY BACKGROUND

1. The CAA 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 CAA, 42 U.S.C. § 7401(b)(1).
2. Section 108(a) of the CAA, 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 CAA, 42 U.S.C. § 7409, requires EPA to promulgate national ambient air quality standards (NAAQS) to protect the public health and welfare.
3. Section 110 of the CAA, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA for approval a State Implementation Plan (SIP) that provides for the implementation, maintenance, and enforcement of the NAAQS. Section 110 also requires that each SIP contain adequate provisions prohibiting any source within the state from emitting any air pollutants in amounts which will interfere with attainment or

maintenance of the NAAQS or cause significant deterioration of air quality in any other state. *See* 40 C.F.R. Part 52.

4. Section 111 of the CAA, 42 U.S.C. § 7411, requires the Administrator of the EPA to establish federal standards of performance for new sources within the list of categories of stationary sources. *See* 40 C.F.R. Part 60.
5. Section 502(b) of the CAA, 42 U.S.C. § 7661, requires the Administrator of the EPA to promulgate regulations which establish the minimum elements of a permit program to be administered by any air pollution control agency. *See* 40 C.F.R. Part 70.

Permit 14-1036 Requirements

6. Under OAC Rule 3745-31 of the Ohio SIP, on February 5, 1987 (modified April 1, 1992), the Ohio Environmental Protection Agency (OEPA) issued Permit to Install (PTI) 14-1036 for the William H. Zimmer Generating Station. Page 2 states that Opacity shall not exceed "20% as a six-minute average except for one six-minute period per hour of not more than 27%."

Ohio State Implementation Plan – Opacity Regulations

7. EPA approved OAC Chapter 3745-17-07(A)(1) as part of the federally enforceable Ohio SIP on June 27, 1994. 59 Fed. Reg. 27464.
8. OAC 3745-17-07(A)(1) of the Ohio SIP requires that "visible particulate emissions from any stack shall not exceed twenty percent opacity, as a six-minute average. [The]... visible particulate emissions from any stack may exceed twenty percent opacity, as a six-minute average, for not more than six consecutive minutes in any sixty minutes, but shall not exceed 60% opacity, as a six-minute average, at any time. June 27, 1994 (*See* 59 Fed. Reg. 27464).

New Source Performance Standards: Subpart Da

9. 40 C.F.R. § 60.42a(b) of Subpart Da states that "no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility any gases which exhibit greater than 20 percent opacity (6-minute average), except for one 6-minute period per hour of not more than 27 percent opacity."

Title V Requirements

10. EPA promulgated full approval of the Ohio's Title V program on August 15, 1995. *See* 40 C.F.R. Part 70, Appendix A; 60 Fed. Reg. 42045. Ohio's Title V program became effective on October 1, 1995. *See* 60 Fed. Reg. 42045.
11. The Ohio regulations governing the Title V permitting program are codified at OAC 3745-77, and are federally enforceable pursuant to Section 113(a)(3).

12. On November 18, 2004, OEPA issued a Final Title V Permit (No. 14-13-09-0154) to Cincinnati Gas & Electric Co., the former owner and operator of the Zimmer Station in accordance with OAC 3745-77 of the Ohio SIP. The Title V permit contained the following provisions:
 - i. Part III, Unit 1 (B006), Condition A.I.1 (page 29): 40 CFR Part 60, Subpart Da, Applicable Emission Limitation, "The ... visible particulate... emission limitations... (20% opacity as a 6-minute average except for one 6-minute period per hour of not more than 27% opacity...) specified in this Subpart are equivalent to or less stringent than the ... visible particulate... emissions limitation established pursuant to OAC rule 3745-31-05(A)(3)."
 - ii. Part III, Unit 1 (B006), Condition A.I.1 (page 30): OAC rule 3745-17-07(A), "The visible particulate emission limitation specified in this rule (20% opacity as a 6-minute average except as provided by rule) is less stringent than the visible particulate emission limitation established pursuant to OAC rule 3745-31-05(A)(3)."
 - iii. Part III, Unit 1 (B006), Condition A.I.2.c (page 30): "Visible particulate emissions shall not exceed 20% opacity, as a 6-minute average, except for one 6-minute period per hour of not more than 27% opacity."

FACTUAL BACKGROUND

13. Duke Energy is incorporated in Delaware.
14. Duke Energy is a "person," as that term is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).
15. The William H. Zimmer Generating Station is located in Clermont County in Moscow, Ohio.
16. Duke Energy operates one coal-fired boiler at the Zimmer Station (B006).
17. Boiler B006 is an electric utility steam generating unit capable of combusting more than 73 megawatts (250 million Btu/hour) heat input of fossil fuel and was constructed after September 18, 1978 and is therefore subject to 40 C.F.R. § 60, Subpart Da.
18. On October 1, 2014, EPA took visible emissions readings of the stack for Boiler B006 at the Zimmer Station in accordance with EPA Method 9 and observed a maximum 6-minute average opacity of 40.2%. EPA observed opacity in excess of the 20% limit, as a 6-minute average, for a total of 24 minutes. This excess emissions period appeared to continue beyond EPA's observation period above, and was noted during and after the Clean Air Act inspection that followed these opacity readings.
19. On October 29, 2014, EPA took visible emissions readings of the stack for Boiler B006 at the Zimmer Station in accordance with EPA Method 9 and observed a maximum 6-minute average opacity of 56.9%. EPA observed opacity in excess of the 20% limit, for a total of 72 minutes. This excess emissions period appeared to continue beyond EPA's

observation period above, and was noted while EPA was leaving the site.

ALLEGED VIOLATIONS

- 20. Duke Energy violated and continues to violate its PTI 14-1036, OAC 3745-17-07(A)(1)(a) of the Ohio SIP, NSPS Subpart Da, and Title V Permit No. 14-13-09-0154 by exceeding 20% opacity, as a six-minute average, on an ongoing basis.
- 21. Pursuant to Section 113(e) of the CAA, the violations set forth in Paragraph 21 above are presumed to continue each day until Duke Energy establishes continuous compliance except to the extent that Duke can prove by a preponderance of the evidence that there were intervening days during which no violations occurred.

ENFORCEMENT AUTHORITY

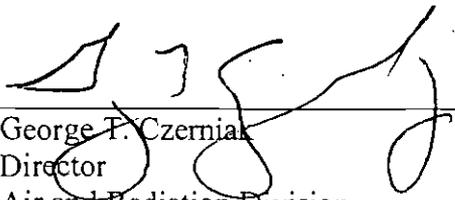
- 22. Sections 113(a)(1) and (3) of the CAA, 42 U.S.C. § 7413(a)(1) and (3), provide that the Administrator may issue an administrative penalty order pursuant to Section 113(d), 42 U.S.C. § 7413(d), or bring a civil action pursuant to Section 113(b), 42 U.S.C. § 7413(b), for injunctive relief and/or civil penalties 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*, an applicable implementation plan, a standard of performance and Title V of the CAA, 42 U.S.C. §§ 7661-7661f, or any rule or permit issued thereunder. *See also* 40 C.F.R. § 52.23.

Environmental Impact of Violations

- 23. Particulate matter, especially fine particulates, contains microscopic solids or liquid droplets, which can get deep into the lungs and cause serious health problems. Particulate matter exposure contributes to:
 - irritation of the airways, coughing, and difficulty breathing;
 - decreased lung function;
 - aggravated asthma;
 - chronic bronchitis;
 - irregular heartbeat;
 - nonfatal heart attacks; and
 - premature death in people with heart or lung disease.

Date

12/16/14


George T. Czerniak
Director
Air and Radiation Division

CERTIFICATE OF MAILING

I, Loretta Shaffer, certify that I sent a Notice of Violation and Finding of Violation, No. EPA-5-15-OH-6, by Certified Mail, Return Receipt Requested, to:

Andrew Roebel
Air Compliance
Duke Energy
139 East Fourth Street, EM740
Cincinnati, Ohio 45202

I also certify that I sent a copy of the Request to Provide Information Pursuant to the Clean Air Act by First-Class Mail to:

Joe Lauer
Duke Energy
W.H. Zimmer Station
1781 U.S. Route 52, EG343
Moscow, Ohio 45153

Robert Hodanbosi, Chief
Division of Air Pollution Control
Ohio Environmental Protection Agency
1800 WaterMark Drive
Columbus, Ohio 43215

Mike Kramer
Permits and Enforcement Section
Hamilton County Department of Environmental Services
250 William Howard Taft Road
Cincinnati, Ohio, 45219-2660

Scott R. Alexander
Taft Stettinius & Hollister LLP
One Indiana Square, Suite 3500
Indianapolis, Indiana 46204-2023

On the 17 day of December 2014.



Loretta Shaffer
Administrative Program Assistant
Planning and Administration Section

CERTIFIED MAIL RECEIPT NUMBER: 7011 1150 0000 2640 5885