



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

SEP 5 2013

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Carl L'Esperance
Safety, Health, and Environmental Manager
Nestle USA, Inc.
4301 West 73rd Street
Anderson, Indiana 46013

Dear L'Esperance:

This is to advise you that the U.S. Environmental Protection Agency has determined that the Nestle USA, Inc. (you) is in violation of the Clean Air Act (the CAA), 42 U.S.C. § 7401 *et seq.*, and the associated state or local pollution control requirements at its facility located at 4301 West 73rd Street, Anderson, Indiana. We are issuing to you a Notice of Violation (NOV) for these violations which are outlined below.

The CAA requires the development of Primary and Secondary National Ambient Air Quality Standards to protect public health and welfare. To attain and maintain these standards, each state is required to develop an implementation plan. Indiana's State Implementation Plan includes, among other things, the requirements of its federally enforceable state operating permit (FESOP) program. EPA finds that you have violated your FESOP.

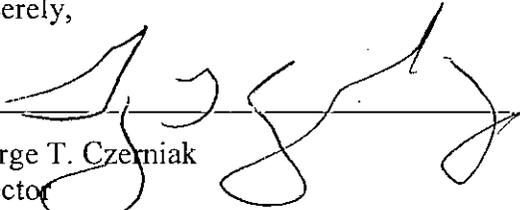
We have several enforcement options under Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1). These options include issuing an administrative compliance order, issuing an administrative penalty order and bringing a judicial civil or criminal action.

We are offering you an opportunity to confer with us about the violations alleged in the NOV. The conference will give you the opportunity to present information on the specific findings of violation, the 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 Roshni Brahmhatt. You may call her at 312-886-4913 or email her at brahmhatt.roshni@epa.gov 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,



George T. Czerniak
Director
Air and Radiation Division

Enclosure

cc: Phil Perry, Chief
Office of Air Quality
Indiana Department of Environmental Management

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)

Nestle USA, Inc.)
Anderson, Indiana)

NOTICE OF VIOLATION

Proceedings Pursuant to)
the Clean Air Act,)
42 U.S.C. §§ 7401 et seq.)

EPA-5-13-IN-12

NOTICE OF VIOLATION

The U.S. Environmental Protection Agency finds that Nestle USA, Inc. (Nestle) is violating the Indiana State Implementation Plan (SIP) and its federally enforceable state operating permit (FESOP) at its facility located at 4301 West 73rd Street, Anderson, Indiana (the facility) as follows:

Regulatory Authority

1. On August 18, 1995, 60 Fed. Reg. 43008, EPA approved 326 Indiana Administrative Code (IAC) 2-8-1 through 2-8-17 (FESOP program) as part of the federally enforceable Indiana SIP.
2. 40 C.F.R. § 52.23 allows EPA to take enforcement action under Section 113 of the Clean Air Act (CAA), 42 U.S.C. § 7413, when a person fails to comply with any approved regulatory provision of a SIP or with any permit limitation or condition contained within an operating permit issued under a SIP-approved permit program.
3. Under 326 IAC 2-8-2(a), any source required to have a Part 70 permit (Indiana's federally approved Title V operating permit program) may apply for a FESOP.
4. On March 6, 2007, the Indiana Department of Environmental Management (IDEM) issued the facility an operating permit, FESOP No. F095-23798-00129.
5. Permit Condition D.2.4.(b) of FESOP No. F095-23798-00129 requires that the "Permittee shall operate the scrubbers on each of the container sterilization and filling facilities (EU-14a, EU-14b, EU-14c, EU-14d, EU-14e, EU-14f) and the overall [volatile organic compound] VOC control (collection and removal) efficiency for each of the scrubbers shall be equal to or greater than 90%."
6. Permit Condition D.2.9 of FESOP No. F095-23798-00129 requires that the "Permittee shall record the pressure drop and flow rate of the wet scrubbers (F1a through F1h) controlling the container sterilization and filling facilities (EU-14a through EU-14f) at least once

per day when the associated process is in operation. When for any one reading, the pressure drop across the scrubber is outside the normal range of 1.5 and 6.5 inches of water, or a range established during the latest stack test, the Permittee shall take reasonable response steps in accordance with Section C – Response to Excursions and Exceedances. When for any one reading, the flow rate of any of the scrubbers is less than 7.0 gallons per minute, or a minimum established during the latest stack test, the Permittee shall take reasonable response steps in accordance with Section C – Response to Excursions and Exceedances. A pressure reading that is outside the above mentioned range or a flow rate that is below the above mentioned minimum is not a deviation from this permit. Failure to take response steps in accordance with Section C – Response to Excursions or Exceedances shall be considered a deviation from the permit.”

7. Permit Condition D.2.11 of FESOP No. F095-23798-00129 requires that “to document compliance with Condition D.2.9, the Permittee shall maintain daily records of pressure drop and flow rate for the wet scrubbers (F1a through F1f) during normal operation.”

8. On July 6, 2009, IDEM issued the facility the first significant permit modification, No. 095-27579-00129, for FESOP No. F095-23798-00129.

9. Permit Condition D.2.8 of No. 095-27579-00129 for FESOP No. F095-23798-00129 requires that the “Permittee shall monitor and record the pressure drop and flow rate of the wet scrubbers (F1a through F1h) controlling the container sterilization and filling facilities (EU-14a through EU-14f and EU-28a through EU-28b) at least once per day when the associated process is in operation. When for any one reading, the pressure drop across the scrubber is outside the normal range of 1.5 and 6.5 inches of water, or a range established during the latest stack test, the Permittee shall take reasonable response. Section C- Response to Excursions or Exceedances contains the Permittee’s obligation with regard to the reasonable response steps required by this condition. When for any one reading, the flow rate of any of the scrubbers is less than the minimum of 7.0 gallons per minute, or a minimum established during the latest stack test, the Permittee shall take reasonable response. Section C- Response to Excursions or Exceedances. A pressure reading that is outside the above mentioned range or a flow rate that is below the above mentioned minimum is not a deviation from this permit. Failure to take response steps shall be considered a deviation from the permit.”

10. Permit Condition D.2.10 of No. 095-27579-00129 for FESOP No. F095-23798-00129 requires that “to document compliance with Condition D.2.8, the Permittee shall maintain daily records of pressure drop and flow rate for the wet scrubbers (F1a through F1h) during normal operation.”

11. On October 13, 2009, IDEM issued the facility the first administrative amendment, No. 095-28455-00129, for FESOP No. F095-23798-00129.

12. On September 15, 2010, IDEM issued the facility the second administrative amendment, No. 095-29404-00129, for FESOP No. F095-23798-00129.

13. On February 28, 2012, IDEM issued the facility a renewal operating permit, FESOP No. F095-30582-00129.

14. Permit Condition D.2.9 of FESOP No. F095-30582-00129 requires that the “Permittee shall record the pressure drop and flow rate of the wet scrubbers (F1a through F1h) controlling the container sterilization and filling facilities (EU-14a through EU-14f and EU-28a through EU-28b) at least once per day when the associated process is in operation. When for any one reading, the pressure drop across the scrubber is outside the normal range of 1.19 and 6.5 inches of water, or a range established during the latest stack test, the Permittee shall take reasonable response steps. Section C – Response to Excursions and Exceedances contains the Permittee’s obligation with regard to the reasonable response steps required by this condition. A pressure reading that is outside the above mentioned range or a flow rate that is below the above mentioned minimum is not a deviation from this permit. Failure to take response steps, shall be considered a deviation from the permit.”

15. Permit Condition D.2.11 of FESOP No. F095-30582-00129 requires that “to document compliance with Condition D.2.6, the Permittee shall maintain daily records of pressure drop and flow rate for the wet scrubbers (F1a through F1h) during normal operation.”

16. Permit Condition D.2.6 of FESOP No. F095-30582-00129 requires that “the Permittee shall perform VOC testing (including capture and overall efficiencies) for one (1) of the wet scrubbers F1a through F1h utilizing methods approved by the Commissioner at least once every 5 years from the date of the most recent valid compliance demonstration.”

17. Permit Condition D.1.5(a) of FESOP No. F095-30582-00129 requires that “visible emissions notations of the Nesquik® Liquid and Coffee-Mate® Liquids Productions, the BOOST® Production and the dust collector associated with bin cleaning of dry ingredients baghouse stack exhausts shall be performed once per day during normal daylight operations. A trained employee shall record whether emissions are normal or abnormal.”

18. Permit Condition D.2.7(a) of FESOP No. F095-30582-00129 requires that “visible emissions notations of the Container Production and Filling operation baghouse stack exhausts shall be performed once per day during normal daylight operations. A trained employee shall record whether emissions are normal or abnormal.”

Findings of Fact

19. Nestle owns and operates the facility which is a stationary food processing and bottling plant, located at 4301 West 73rd Street, Anderson, Indiana.

20. The facility consists of emission units and pollution control devices related to Nesquik® Liquid and Coffee-Mate® Liquid Production, BOOST® Production, Container Production and Filling, and of boilers.

21. The Container Production and Filling emission units include six (6) container sterilization and filling facilities, identified as EU -14a through EU-14f or Lines 1 through 6 respectively, constructed in 2007. Emissions from each sterilization and filling facility are controlled by a wet scrubber (F1a through F1f, respectively) and exhaust to a stack (VF1a through VF1f), respectively. The emissions units also include two (2) container sterilization and filling facilities, identified as EU -28a through EU-28b or Lines 7 through 8 respectively, constructed in 2009. The emissions from each sterilization and filling facility are controlled by a

wet scrubber (F1g through F1h, respectively) and exhaust to stacks VF1g through VF1h, respectively.

22. On November 5, 2012, EPA conducted an inspection of the facility to assess compliance with the CAA.

23. On March 6, 2013, EPA issued a Request for Information (Request) to Nestle under Section 114 of the CAA, 42 U.S.C. § 7414.

24. Nestle responded to the Request for Information on May 17, 2013, and June 28, 2013 (Section 114 Response).

25. On July 10-11, 2008, Geosyntec Consultants and Pace Analytical Services, Inc. conducted a performance test at Line 1 (EU-14a) of the container sterilization and filling process and summarized the results of this test in a report (July 2008 Emissions Test).

26. The July 2008 Emissions Test identified scrubber efficiency rates, on July 10, 2008, ranging from 41.7% to 69.4% on the three production runs, and from 76.2% to 92.1%, on the two sterilization-in-place runs. Four of the five runs did not meet the overall VOC control efficiency limit of 90%.

27. On September 15-17, 2010, Geosyntec Consultants and Pace Analytical Services, Inc. conducted a performance test at Line 7 (EU-28a) of the container sterilization and filling process and summarized the results of this test in a report (September 2010 Emissions Test).

28. The September 2010 Emissions Test identified the scrubber water flow rate to be approximately 190 gallons per minute (gpm) throughout the testing.

29. In its Section 114 Response, Nestle provided operating logs for the scrubbers on production lines 1-5 (EU-14a through EU-14e), and production line 7 (EU-28a).

30. Prior to October 10, 2011, Nestle did not record flow rate for Line 1 (EU-14a).

31. From October 10, 2011 to March 7, 2013, there was a total of 131 days out of 514 days that Line 1 (EU-14a) was below the minimum required flow rate and that Nestle failed to take any response steps.

32. Prior to October 7, 2011, Nestle did not record flow rate for Line 2 (EU-14b).

33. From October 7, 2011 to March 7, 2013, there was a total of 73 days out of 514 days that Line 2 (EU-14b) did not meet the minimum flow rate and that Nestle failed to take any response steps.

34. Prior to October 6, 2011, Nestle did not record flow rate for Line 3 (EU-14c).

35. Prior to October 7, 2011, Nestle did not record flow rate for Line 4 (EU-14d).

36. Prior to October 6, 2011, Nestle did not record flow rate for Line 5 (EU-14e).

37. Prior to October 6, 2011, Nestle did not record flow rate for Line 7 (EU-28a).
38. During the inspection, Nestle notified EPA that starting November 1, 2012 the facility performed visible emission notations on the boilers.
39. In its Section 114 Response, there is no record of visible emission notations of the Nesquik® Liquid and Coffee-Mate® Liquids Productions, the BOOST® Production, the dust collector associated with bin cleaning of dry ingredients baghouse stack exhausts, or the Container Production and Filling operation baghouse stack exhausts.
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Violations

40. Nestle failed to comply with the overall VOC control efficiency limit of 90% during the July 2008 Emissions Test, in violation of permit Condition D.2.4.(b) of FESOP No. F095-23798-00129.
41. Nestle failed to monitor and record the flow rate of the wet scrubber associated with Line 1 (EU-14a) from March 6, 2007 to October 10, 2011, in violation of Condition D.2.9 and Condition D.2.11 of FESOP No. F095-23798-00129 and FESOP No. F095-30582-00129.
42. Nestle failed to take response steps on 131 days from October 10, 2011 to March 7, 2013 for Line 1 (EU-14a), when the facility was below the minimum required flow rate, in violation of Condition D.2.9 and Condition D.2.11 of FESOP No. F095-23798-00129 and FESOP No. F095-30582-00129.
43. Nestle failed to monitor and record the flow rate of the wet scrubber associated with Line 2 (EU-14b) from March 6, 2007 to October 10, 2011, in violation of Condition D.2.9 and Condition D.2.11 of FESOP No. F095-23798-00129 and FESOP No. F095-30582-00129.
44. Nestle failed to take response steps on 73 days from October 10, 2011 to March 7, 2013 for Line 2 (EU-14b), when the facility was below the minimum required flow rate, in violation of Condition D.2.9 and Condition D.2.11 of FESOP No. F095-23798-00129 and FESOP No. F095-30582-00129.
45. Nestle failed to monitor and record the flow rate of the wet scrubber associated with Line 3 (EU-14c) from March 6, 2007 to October 10, 2011, in violation of Condition D.2.9 and Condition D.2.11 of FESOP No. F095-23798-00129 and FESOP No. F095-30582-00129.
46. Nestle failed to monitor and record the flow rate of the wet scrubber associated with Line 4 (EU-14d) from March 6, 2007 to October 10, 2011, in violation of Condition D.2.9 and Condition D.2.11 of FESOP No. F095-23798-00129 and FESOP No. F095-30582-00129.
47. Nestle failed to monitor and record the flow rate of the wet scrubber associated with Line 5 (EU-14e) from March 6, 2007 to October 10, 2011, in violation of Condition D.2.9 and Condition D.2.11 of FESOP No. F095-23798-00129 and FESOP No. F095-30582-00129.
48. Nestle failed to monitor and record the flow rate of the wet scrubber associated with Line 7 (EU-28a) from March 6, 2007 to October 10, 2011, in violation of Condition D.2.8

and Condition D.2.10 of No. 095-27579-00129 for FESOP No. F095-23798-00129, and Condition D.2.9 and Condition D.2.11 of FESOP No. F095-30582-00129.

49. Since February 28, 2012, Nestle has failed to perform visible emission notations of the Nesquik® Liquid and Coffee-Mate® Liquids Productions, the BOOST® Production and the dust collector associated with bin cleaning of dry ingredients baghouse stack exhausts nor of the Container Production and Filling operation baghouse stack exhausts, in violation of Condition D.1.5 and Condition D.2.7 of FESOP No. F095-30582-00129.

Environmental Impact of Violations

50. The violations alleged in this NOV result in excess emissions of particulate matter (PM), and VOCs.

51. Health effects of PM include increased respiratory symptoms and disease, decreased lung function, and alterations in lung tissue and structure and in respiratory tract defense mechanisms, and premature death. PM also is the major cause of reduced visibility in many parts of the nation.

52. When VOCs in the atmosphere react with nitrogen oxides, ozone is produced. Breathing ozone contributes to a variety of health problems including chest pain, coughing, throat irritation, and congestion. It can worsen bronchitis, emphysema, and asthma. Ground-level ozone also can reduce lung function and inflame lung tissue. Repeated exposure may permanently scar lung tissue.

Date _____

9/5/13



George T. Czerniak
Director
Air and Radiation Division

CERTIFICATE OF MAILING

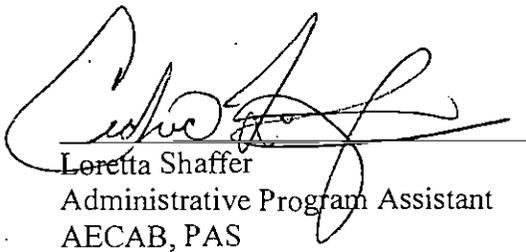
I, Loretta Shaffer, certify that I sent a Notice of Violation, No. EPA-5-13-IN-12, by Certified Mail, Return Receipt Requested, to:

Carl L'Esperance
Safety, Health, and Environmental Manager
Nestle USA, Inc.
4301 West 73rd Street
Anderson, Indiana 46013

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

Mr. Phil Perry, Chief
Air Compliance and Enforcement Branch
Indiana Department of Environmental Management
100 N. Senate Ave. (Mail Code 61-53 IGCN 1003)
Indianapolis, Indiana 46204-2251

On the 5th day of SEPTEMBER 2013.


Loretta Shaffer
Administrative Program Assistant
AECAB, PAS

CERTIFIED MAIL RECEIPT NUMBER: 70091680 0000 7676 1154