



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

SEP 27 2010

REPLY TO THE ATTENTION OF:

(AE-17J)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Robert Radandt, President
Sheboygan Sand & Gravel, Inc.
1800 Johnston Drive
Manitowoc, Wisconsin 54220

Re: Notice and Finding of Violation
Sheboygan Sand & Gravel, Inc.
Kiel, Wisconsin (facility location)

Dear Mr. Radandt:

The U.S. Environmental Protection Agency is issuing the enclosed Notice and Finding of Violation (NOV/FOV) to Sheboygan Sand & Gravel, Inc. (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 (NSPS), 40 C.F.R. Part 60, General Provisions, Subpart A, and the standards specific to Nonmetallic Mineral Processing Plants, Subpart OOO, as well as the Wisconsin State Implementation Plan, at your Kiel, Wisconsin facility.

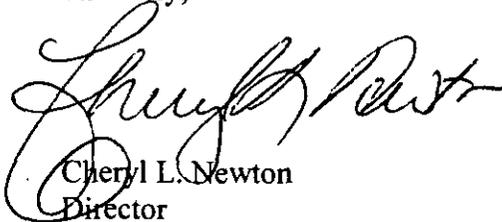
Section 113 of the Clean Air Act gives us several enforcement options. These options include issuing an administrative compliance order, issuing an administrative penalty order, and bringing a judicial civil or criminal action.

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 written in a cursive, flowing style.

Cheryl L. Newton
Director
Air and Radiation Division

Enclosure

cc: William Baumann, Chief, Compliance and Enforcement Section, WDNR
Richard Wulk, Supervisor Northeast Region, WDNR

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)	
Sheboygan Sand and Gravel, Inc.)	NOTICE and FINDING OF VIOLATION
Facility Located in Kiel, Wisconsin)	EPA-5-10-WI-09
)	
)	
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 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 Sheboygan Sand & Gravel, Inc. (SSG) violated the Wisconsin State Implementation Plan (SIP) and the New Source Performance Standards (NSPS) at 40 C.F.R. Part 60 Subpart A and Subpart OOO, as follows:

Statutory and Regulatory Background

1. Pursuant to Section 110 of the Act, 42 U.S.C. § 7410, each State is responsible for submitting to EPA for approval an implementation plan which specifies how the State will achieve, maintain, and enforce all primary and secondary National Ambient Air Quality Standards in the State.
2. Under Section 110(a) of the Act, each State Implementation Plan (SIP) must include a permit program to regulate the modification and construction of any stationary source of air pollution as necessary to assure that NAAQS are achieved. SIPs must include enforceable emission limitations, control measures, and schedules for compliance. Upon EPA's approval of a SIP, the plans become independently enforceable by the federal government, as stated under Section 113(a) of the Act, 42 U.S.C. § 7413(a).
3. On January 18, 1995, EPA approved Wisconsin Administrative Code NR 400, NR 406, and NR 407 as part of the federally enforceable SIP for Wisconsin. 60 Fed. Reg. 3538 (January 18, 1995). 40 C.F.R. §52.2570(c)(75) and (76).
4. NR 400.02 states that the definition of "stationary source" "has the meaning given in Section 144.30(23) of the Wisconsin Statutes."

5. Section 144.30 has been renumbered to be Section 285.01(41) of the Wisconsin Statutes. Under 285.01(41), “stationary source” means “any facility, building, structure or installation that directly or indirectly emits or may emit an air contaminant only from a fixed location. A stationary source includes an air contaminant source that is capable of being transported to a different location.”
6. NR 400.02(55) states a “modification” means “any physical change in, or change in the method of operation of, a stationary source that increases the amount of emissions of an air contaminant or that results in the emission of an air contaminant not previously emitted. A modification does not include any changes identified in s. NR 406.04(4).”
7. NR 406.03 states that “no person may commence construction, reconstruction, replacement, relocation or modification of a stationary source unless the person has a construction permit for the source or unless the source is exempt from the requirement to obtain a permit under § 144.391(5) Wis. Stats. (now re-numbered as § 285.60(1)(a) Wis. Stats.), or under this chapter.” The statutory exemptions are not applicable here.
8. NR 406.04(2) states “no construction permit is required prior to commencing construction, reconstruction, replacement, relocation or modification of a direct source if all of the following conditions are met: (c) The maximum theoretical emissions from the source for particulate matter, nitrogen oxides or volatile organic compounds do not exceed 5.7 pounds per hour for each air contaminant.”
9. NR 407.01 states that chapter NR 407 “applies to all stationary sources which are required under s§ 144.391(6) Wis. Stats. (now §285.60(1)(b)), to obtain an operation permit.”
10. NR 400.02(70) defines “portable source” as “any facility, installation, operation or equipment which may directly result in the emission of any air contaminant only while at a fixed location but is capable of being transported to a different location. (e.g., portable asphalt plant, portable package boiler, portable air curtain destructor, etc.). As a type of direct stationary source, a modified portable source or a portable source, which has never received a plan approval or air pollution control permit, is subject to the requirements of chs. NR 406, 407, and 408.”
11. Section 285.60 of the Wisconsin statutes states that “no person may operate a new or modified source unless the person has an operation permit” from the Wisconsin Department of Natural Resources (WDNR). The exemptions to that requirement are not applicable here.
12. NR 407.03(2)(b) states “no operation permit is required for a direct source if the source is not a part 70 source and: (b) the maximum theoretical emissions for particulate matter, nitrogen oxides or organic compounds do not exceed 5.7 pounds per hour for each air contaminant.”

13. 40 C.F.R. Part 60, the New Source Performance Standards (NSPS), set forth general regulations in Subpart A, §§ 60.1 to 60.19, which are applicable across the various industry groups subject to Part 60. Additional regulations specific to Nonmetallic Mineral Processing Plants are set forth in Subpart OOO, §§ 60.670-60.676.
14. EPA promulgated NSPS Subpart OOO, Standards of Performance for Nonmetallic Mineral Processing Plants (Subpart OOO), on August 1, 1985 (51 Fed.Reg. 31337), amended at 54 Fed.Reg. 6680 (February 14, 1989), and further amended at 74 Fed. Reg. 19309 (April 28, 2009).
15. 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.
16. 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.
18. 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.” 40 C.F.R. § 60.670.
19. 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.
20. Until April 28, 2009, the NSPS, at 40 C.F.R. § 60.7(a)(1), and 40 C.F.R. § 60.670(f), required owners or operators subject to the Subpart OOO standards to furnish, to the Administrator, written notification of the date construction or reconstruction of an affected facility is commenced, postmarked no later than 30 days after such date.
21. As of April 28, 2009, the Subpart OOO standards waived this general notification requirement set forth under 40 C.F.R. § 60.7(a)(1) for facilities covered by the Subpart. 74 Fed. Reg. 19309 (April 28, 2009).
22. The NSPS, at 40 C.F.R. § 60.7(a)(3) and at 40 C.F.R. § 60.676(i), together require 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.
23. The NSPS, at 40 C.F.R. § 60.8(a) and § 60.672, require that “within 60 days after achieving the maximum production rate at which the affected facility will be operated, but not more than 180 days after initial startup” of the facility, the owner or operator of the facility shall

conduct performance test(s) and furnish the Administrator a written report of the results of the performance test(s).

24. Under 40 C.F.R. § 60.4 and 40 C.F.R. § 60.676(k), the written notifications described in Paragraphs 20 and 22-23 above are to be submitted to the Wisconsin Department of Natural Resources (WDNR).

Sheboygan Sand and Gravel's Operations in Kiel, Wisconsin

24. At all times relevant to this Notice, SSG was the owner and/or operator of a nonmetallic mineral processing plant located in Kiel, Wisconsin.
25. On October 22, 2009, pursuant to the "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations" (Audit Policy), SSG disclosed that a portable screen was in operation at the facility on October 22, 2009, and was replaced in 1998.
26. On or about July 22, 2010, Region 5, in consultation with EPA HQ, determined that SSG did not meet the requirement for prompt disclosure set forth in the Audit Policy, especially given its close relationship with Fred Radandt Sons, Inc. (Radandt). Radandt and SSG are owned by members of the same family, headquartered at the same address, and share officers.
27. On September 11, 2009 one of Radandt's facilities received a NOV/FOV for failure to obtain construction and operation permits in accordance with NR 406, and NR 407 of the Wisconsin SIP, and failure to notify for construction commencement and initial start-up, and failure to performance test in accordance with NSPS Subparts A and OOO.
28. SSG's self disclosure under the Act only addressed the status of the portable screen under the NSPS; therefore, it did not address the majority of the violations set forth in this NOV/FOV. In addition, the Radandt facility was inspected by WDNR in 2007, and Radandt was told during that inspection that its facility was subject to NSPS Subpart OOO. Since SSG's disclosure did not occur until October 2009, given the close relationship between Radandt and SSG, SSG's self disclosure did not meet the "prompt disclosure" requirement of the Audit Policy.
29. SSG received an after-the-fact construction permit with ability to operate for 18 months on December 17, 2009, and an operation permit on July 14, 2010. The permit application stated that the plant was a portable sand and gravel plant, and also stated that a primary crusher, cone crusher, sand screw and screen are in operation at the facility.
30. The primary crusher, cone crusher, sand screw and screen in operation at the SSG's portable nonmetallic mineral processing plant emit or may emit particulate matter.
31. SSG's October 22, 2009 disclosure stated that the facility is subject to the NSPS for Nonmetallic Mineral Processing Plants, Subpart OOO. Under 40 C.F.R. §60.670(a)(2),

portable sand and gravel plants subject to the Subpart OOO standards have production capacities greater than 150 tons per hour.

32. Applying EPA's standard guidance, AP-42, Fifth Edition, *Compilation of Air Pollutant Emission Factors, Volume I, Stationary Point and Area Sources*, the maximum theoretical emissions for particulate matter from SSG's portable nonmetallic mineral processing plant exceed 5.7 pounds per hour.
33. SSG's portable nonmetallic mineral processing plant is subject to the operation permit requirements set forth in Wisconsin Administrative Code NR 407, incorporated into the Wisconsin SIP at 60 Fed. Reg. 3543.
34. Each of SSG's failures to obtain an operation permit for each separate piece of equipment is an additional separate violation of the Wisconsin SIP.
35. SSG did not obtain an operation permit required by the federally enforceable Wisconsin SIP before beginning operation of its stationary sources located at its nonmetallic mineral processing plant.
36. SSG's plant is subject to the requirements at 40 C.F.R. § 60.7(a)(1) and (3), § 60.8(a), and 40 C.F.R. Part 60, Subparts A and OOO, because affected facilities at the plant were modified or constructed and began operation after August 31, 1983.
37. SSG's initial compliance testing was conducted on June 28, 2010. Performance testing did not occur within 180 days of initial start-up after the affected facilities were constructed or modified.

Violations

38. SSG's operations at its Kiel, Wisconsin facility prior to December 17, 2009 are in violation of NR 407 and the Wisconsin SIP.
39. The sources listed below were in violation of NR 407 and the Wisconsin SIP because they were constructed and in operation before receiving the necessary operation permits:
 - a. Primary Crusher, Serial No.C-54047
 - b. Cone Crusher with El-Jay Screen Serial No. 34J0385
 - c. AC Screen, Serial No. C54084
 - d. Sand screw, Serial No. 13036
 - e. Chieftan Power Screen
40. SSG violated the NSPS at 40 C.F.R. § 60.8(a) and § 60.672 because the company did not conduct performance tests on the affected facilities at the plant, listed as items a through d in Paragraph 39 above, within 180 days of the initial startup. Each failure to conduct a performance test of the affected facilities listed above in Paragraph 39 is a separate violation of 40 C.F.R. § 60.8(a) and § 60.672.

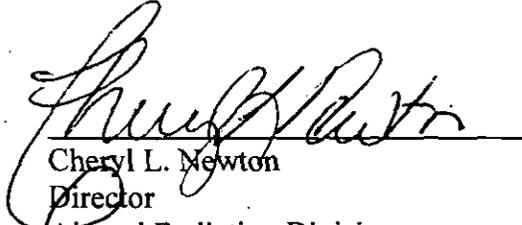
Enforcement Authority

41. Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), provides that at any time after the expiration of 30 days following the date of the issuance of a Notice of Violation, the Administrator may, without regard to the period of violation, issue an order requiring compliance with the requirements of the state implementation plan or permit, issue an administrative penalty order pursuant to Section 113(d), or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties.

42. Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), provides in part that if the Administrator finds that a person has violated, or is in violation of any requirement or prohibition of any rule . . . promulgated . . . under . . . [Title I or Title V of the Act], the Administrator may issue an administrative penalty order under Section 113(d), issue an order requiring compliance with such requirement or prohibition, or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties.

Dated: _____

9/27/10



Cheryl L. Newton
Director
Air and Radiation Division

CERTIFICATE OF MAILING

I, Tracy Jamison, certify that I sent a Notice and Finding of Violation, No. EPA-5-10-WI-09 by Certified Mail, Return Receipt Requested, to:

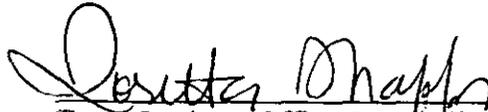
Robert Radandt, President
Sheboygan Sand & Gravel, Inc.
1800 Johnston Drive
Manitowoc, Wisconsin 54220

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

William Baumann, Chief, Compliance and Enforcement Section
Wisconsin Department of Natural Resources
Bureau of Air Management
101 South Webster Street
P.O. Box 7921 (AM/7)
Madison, Wisconsin 53702

Richard Wulk, Supervisor - North Team
Northeast Region
Wisconsin Department of Natural Resources
Bureau of Air Management
2984 Shawano Avenue
Green Bay Wisconsin 54313-6727

on the 28 day of Sept, 2010.


Tracy Jamison, Office Automation Assistant
AECAS (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0006 0192 0379