



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

JUN - 4 2010

REPLY TO THE ATTENTION OF:
(AE-17J)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

City of Akron
c/o Cheri B. Cunningham, Director of Law
166 South Street
Akron, Ohio 44308

Re: Notice of Violation and Finding of Violation

Dear Ms. Cunningham:

The U.S. Environmental Protection Agency is issuing the enclosed Notice of Violation (NOV) and Finding of Violation (FOV) to the City of Akron under Sections 113(a)(1) and (a)(3) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(a)(1) and (a)(3). We find that you are violating the permit requirements under Section 502 of Title V of the CAA, 42 U.S.C. §§ 7661a-7661b, and the Ohio State Implementation Plan at your Akron, Ohio facility.

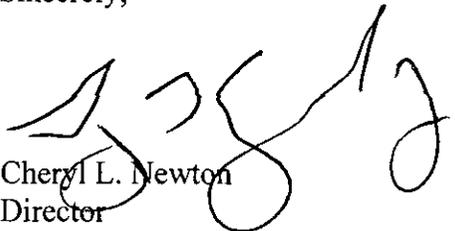
Section 113 of the Clean Air Act gives us several enforcement options.

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 if you choose.

The contacts in this matter are Erik Hardin, Environmental Scientist, and Catherine Garypie, Associate Regional Counsel. You may call them at (312) 886-2402 and (312) 886-5825, respectively, to request a conference. You should make the request as soon as possible, but no later than 10 calendar days after you receive this letter. We should hold any conference within 30 calendar days of your receipt of this letter.

Sincerely,



Cheryl L. Newton
Director
Air and Radiation Division

F02

cc: Robert Hodanbosi, Chief
Ohio Environmental Protection Agency

Frank Markunas, Administrator
Akron Regional Air Quality Management District

Steve Bell, Esq.
Steven D. Bell Co., L.P.A.
Millside Centre, Suite 11
8803 Brecksville Road
Brecksville, Ohio 44141

44. OAC 3745-77-02(A) prohibits operation of a source subject to Title V permitting requirements without a permit issued under Chapter 3745-77. OAC 3745-77-02(A)(1) requires that each Title V permit shall include emission limits and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of issuance.
45. Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), authorizes the Administrator to initiate an enforcement action whenever, among other things, the Administrator finds that any person has violated or is in violation of a requirement or prohibition of Title V of the CAA, or any rule promulgated, issued or approved under Title V of the CAA.

Factual Background

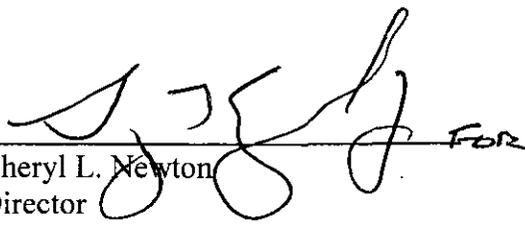
46. The City of Akron owns the district steam heating plant (the facility) at 226 Opportunity Parkway, Akron, Ohio. This facility consists of the Akron Recycle Energy Systems (RES) Facility and the former B.F. Goodrich powerhouse, also known as the Annex Facility, which is located directly across the Ohio and Erie Canal from the RES Facility.
47. Five boilers with a combined heat input of 1027 million Btu/hr are operated at the facility.
48. Akron Energy Systems LLC (“AES”) currently operates the facility. A company named Akron Thermal Limited Partnership LLP (“Akron Thermal”) operated the facility before AES, from approximately August 4, 1995, to September 8, 2009. AES took over facility operations on September 8, 2009, pursuant to an Interim License and Operating Agreement with the City of Akron.
49. The facility is subject to Title V of the CAA (Sections 502 and 503) because it is a major source (as defined in Section 501(2) of the CAA) with the potential to emit more than 100 tons of NO_x, CO, and SO₂ per year.
50. The State of Ohio issued a Title V permit to Akron Thermal on February 4, 1999. This permit has not been transferred to the City of Akron, and the State of Ohio has not issued any subsequent permits for the facility.

Violations

51. The City of Akron failed to obtain a Title V permit for the facility prior to operating the facility, and the City of Akron, through a management agreement with AES, continues to operate the facility, in violation of the Section 504 of the CAA, 40 C.F.R. § 70.1(b), and OAC 3745-77-02(A)(1).

52. The violation noted in paragraph 51 exists from at least September 8, 2009, and will continue until the City of Akron obtains a Title V permit that assures compliance with all applicable requirements of the CAA.

6/4/10
Date


Cheryl L. Newton For
Director
Air and Radiation Division

bcc: E. Hardin, ARD
C. Garypie, ORC
I. Saltzbar, EPA-OECA/OCE/AED
S. Burke, EPA – OECA/OCE/AED
J. Bickett, AUSA
P. Lee, USDOJ-ENRD/EES

CERTIFICATE OF MAILING

I, Loretta Shaffer, certify that I sent a Notice and Finding of Violation, No. EPA-5-OH-10 , by Certified Mail, Return Receipt Requested, to:

City of Akron
c/o Cheri B. Cunningham, Director of Law
166 South Street
Akron, Ohio 44308

and

Steve Bell, Esq.
Steven D. Bell Co., L.P.A.
Millside Centre, Suite 11
8803 Brecksville Road
Brecksville, Ohio 44141

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

Robert Hodanbosi, Chief
Division of Air Pollution Control
Ohio Environmental Protection Agency
Lazarus Government Center
P.O. 1049
Columbus, Ohio 43216 1049

and

Frank Markunas, Administrator
Akron Regional Air Quality Management District
146 South High St. Room 904
Akron, Ohio 44308

On the 8 day of June, 2010.

CERTIFIED MAIL RECEIPT NUMBER: 7001 032000060192 0492