



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

SEP 18 2012

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Tim Stickler
Environmental Supervisor
New Energy Corporation
3201 West Calvert Street
South Bend, Indiana 46680-2289

Dear Mr. Stickler:

This is to advise you that the U.S. Environmental Protection Agency has determined that the New Energy Corporation's facility at 3201 West Calvert, South Bend, Indiana (facility) is in violation of the Clean Air Act (CAA) and associated state or local pollution control requirements. A list of the requirements violated is provided below. We are issuing to you the enclosed Notice of Violation and Finding of Violation (NOV/FOV) for these violations.

There are limitations on the quantity of sulfur dioxide emissions which can be emitted from your facility's stacks. These limits were previously incorporated into New Energy Corporation's 1981/1982 PSD Permit/Permit to Construct and are now incorporated into the New Energy Corporation's Title V Permit. The Title V limits are based upon the Indiana SIP provisions set forth at 326 IAC 2-2. The purpose of these limits is to maintain attainment of the NAAQS for SO₂ and help reduce acid rain. Exposure to high levels of SO₂ gas and particles can cause respiratory illness, aggravate existing heart disease, and lead to premature death. Excess emissions of SO₂ increase the amount of acid rain and public exposure to unhealthy levels of SO₂. SO₂ reacts with other chemicals in the air to form tiny sulfate particles.

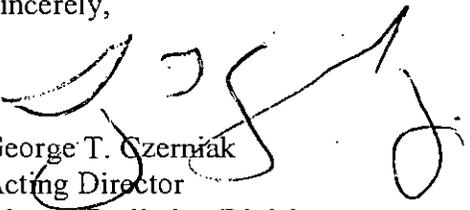
The EPA finds that New Energy's facility has violated the above-listed Indiana SIP requirements as incorporated into the New Energy's Title V Permit. Since the New Energy violated its Title V permit, you have also violated Title V of the CAA and its associated regulations which require compliance with the terms and conditions of Title V permits. Additionally, in violating the Indiana SIP requirements and your Title V Permit, you have violated Title I of the CAA and its implementing regulations, which require compliance with the terms and conditions of the Indiana SIP and permits to install, such as the 1981/1982 PSD Permit/Permit to Construct.

Section 113 of the CAA gives us several enforcement options to resolve these violations, including: issuing an administrative compliance order, issuing an administrative penalty order, bringing a judicial civil action and bringing a judicial criminal action.

We are offering you the opportunity to request a conference with us about the violations alleged in the NOV/FOV. A conference should be requested within 10 days following receipt of this notice. A conference should be held within 30 days following receipt of this notice. This conference will provide you a chance to present information on the identified violations, 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 take part in these discussions. You may have an attorney represent and accompany you at this conference.

The EPA contact in this matter is Shilpa Patel. You may call her at (312) 886-0120 if you wish to request a conference. The EPA hopes that this NOV/FOV will encourage New Energy's compliance with the requirements of the CAA.

Sincerely,



George T. Czerniak
Acting Director
Air and Radiation Division

cc: Matthew Chaifetz, IDEM

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)	
)	
New Energy Corporation)	NOTICE OF VIOLATION and
South Bend, Indiana)	FINDING OF VIOLATION
)	
)	EPA-5-12-05-IN
Proceedings Pursuant to)	
the Clean Air Act)	
42 U.S.C. § 7401 et seq)	

NOTICE AND FINDING OF VIOLATION

New Energy Corporation (you or New Energy) owns and operates one coal-fired Riley boiler at 3201 West Calvert Street; South Bend, Indiana (facility). The boiler is identified as EU-14.

The U.S. Environmental Protection Agency is issuing this Notice of Violation and Finding of Violation (NOV/FOV or Notice) to notify you that we have found sulfur dioxide (SO₂) emissions from Unit EU-14 at your facility in excess of the limits specified in your 1981/1982 PSD Permit/Permit to Construct, your Title V permit and the Indiana State Implementation Plan (IN SIP). These exceedances constitute violations of the Clean Air Act (the Act or CAA).

Section 113 of the Act provides you with the opportunity to request a conference with us to discuss the violations alleged in the NOV/FOV. This conference will provide you a chance to present information on the identified violations, any efforts you have taken to comply, and the steps you will take to prevent future violations. Please plan for the facility's technical and management personnel to take part in these discussions. You may have an attorney represent and accompany you at this conference.

Statutory and Regulatory Background

Prevention of Significant Deterioration

1. The 1977 amendments to the CAA, Public Law 95-95, added the Prevention of Significant Deterioration (PSD) program, which was codified at 42 U.S.C. § 7470, to protect air cleaner than national standards. Under these amendments, the EPA was entitled to issue and enforce permits, and issue and enforce compliance and penalty orders and engage in civil litigation. See, P.L. 95-95 §§ 112 and 304. The CAA's enforcement provisions were later revised by the 1990 amendments.
2. On June 19, 1978, the EPA promulgated the PSD regulations pursuant to Part C of Title I of the Act. 43 Fed. Reg. 26403 (June 19, 1978).

3. The PSD provisions of Part C of Title I of the Act require preconstruction review and permitting for modifications of stationary sources. *See* 42 U.S.C. §§ 7470-7492. Pursuant to applicable regulations, if a major stationary source located in an attainment area is planning to make a major modification, then that source must obtain a PSD permit before beginning actual construction. *See* 40 C.F.R. § 52.21(a)(1)(iii). To obtain this permit, the source must, among other things, undergo a technology review and apply best available control technology (BACT); perform a source impact analysis; perform an air quality analysis and modeling; submit appropriate information; and conduct additional impact analyses as required.
4. On August 7, 1980, the EPA determined that the Indiana PSD rules did not satisfy the Act's requirements and disapproved them under Section 110(a)(3) of the Act, 42 U.S.C. § 7410(a)(3). At that same time, the EPA incorporated the provisions of 40 C.F.R. § 52.21(b) through (w) into the Indiana SIP, 45 Fed. Reg. 52676, 52741, as amended at 46 Fed. Reg. 9580 and codified at 40 C.F.R. § 52.793. On January 29, 1981, EPA delegated to the Indiana Department of Environmental Management (IDEM) the partial authority to review and process PSD permit applications, and to implement the federal PSD program. 46 Fed. Reg. 9580, 9583.
5. On March 23, 2003, the EPA conditionally approved into the Indiana SIP, 326 IAC 2-2, which contains Indiana's PSD regulations. 68 Fed. Reg. 9892, 40 C.F.R. § 52.770(c) (147); the citations set forth in the codification were corrected via a Notice published on June 27, 2003, 68 Fed. Reg. 38197. On May 20, 2004, the EPA approved the 326 IAC 2-2 rules into the Indiana SIP. 69 Fed. Reg. 29071, 40 C.F.R. § 52.770(c)(165). On June 18, 2007, EPA partially approved the revisions to 326 IAC 2-2. 72 Fed. Reg. 33395.

Title V Permit Program

6. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), and 40 C.F.R. § 70.7(b), provide that, after the effective date of any permit program approved or promulgated under Title V of the CAA, no source subject to Title V may operate except in compliance with a Title V permit.
7. Section 113(a)(3) of the CAA, 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.
8. U.S. EPA granted interim approval to the Indiana's Title V operating permit program on November 14, 1995, with final approval on November 30, 2001. (60 Fed. Reg. 62969).

Factual Findings

9. New Energy owns and operates a coal fired Riley boiler at 3201 West Calvert Street; South Bend, Indiana.

10. On December 3, 1981, the EPA granted a PSD Permit and on February 12, 1982, the St. Joseph County Health Department issued a Permit to Construct to New Energy. Both the EPA-issued PSD permit and the Permit to Construct limited New Energy's total SO₂ emissions from any operating boiler or combination of operational boilers to 1630 tons per year and 412 pounds per hour.
11. On October 18, 1996, New Energy applied for a Part 70 operating permit. On March 17, 2008, IDEM issued Title V permit T-141-6956-00033 (Title V Permit) to New Energy, allowing operation of the facility according to the limits specified in the PSD Permit/Permit to Construct.

Explanation of Violations

12. The permits and permit conditions relevant to this NOV/FOV are as follows:
 - a. New Energy's 1981/1982 PSD Permit/Permit to Construct limit the total SO₂ emissions from the facility to 412 pounds per hour.
 - b. New Energy's 1981/1982 PSD Permit/Permit to Construct limit the total SO₂ emissions from the facility to 1630 tons per year.
13. Based on evaluation of the information request responses dated, November 5, 2009 and April 22, 2010, the EPA has determined that emissions from the Riley boiler, EU-14, exceeded the emission limits identified in Paragraph 12 above, as follows:

1630 Tons per Year Violations

Month	12 month Rolling SO ₂ Emissions
Oct 06	1637.268
Nov 06	1640.965
Dec 06	1655.573
Jan 07	1652.470
Feb 07	1650.105
Mar 07	1639.043
Apr 07	1692.494
May 07	1710.113
June 07	1709.784
July 07	1687.493
Aug 07	1666.088

412 Pounds per Hour Violations

Month	SO ₂ Emissions (lbs/hr)
Jul 06	419.45
Aug 06	433.76

14. The permits and permit conditions relevant to this NOV/FOV are as follows:
- a. New Energy's Title V Permit Section D.1.1 (a)(1)(B) and 326 IAC 2-2 limit the total SO₂ emissions from the facility to 412 pounds per hour.
 - b. New Energy's Title V Permit Section D.1.1 (a)(1)(C) and 326 IAC 2-2 limit the total SO₂ emissions from the facility to 1630 tons per year.
15. Based on evaluation of the information request responses dated November 5, 2009 and April 22, 2010, the EPA has determined that total SO₂ emissions from the Riley boiler, EU-14, exceeded the emission limits identified in Paragraph 14 above, as follows:

1630 Tons per Year Violations

Month	12 month Rolling SO ₂ Emissions
Aug 09	1636.698

412 Pounds Per Hour Violations

Month	SO ₂ Emissions (lbs/hr)
April 08	431.87
Aug 08	415.06
Aug 08	415.06
Jul 09	433.22

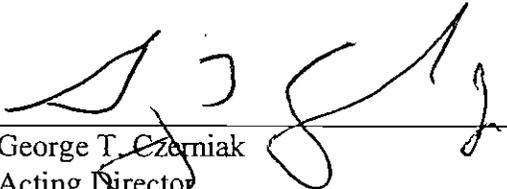
16. New Energy's excess emissions from Boiler EU-14 during 2006 through 2007 are violations of the SO₂ limits in the 1981/1982 PSD Permit/Permit to Construct; and New Energy's excess emissions from Boiler EU-14 during 2008 through 2009 are violations of the SO₂ limits in Section D.1.1 (a)(1)(B) and D1.1 (a)(1)(C) of its Title V Permit and applicable Indiana SIP requirement specified in the Title V Permit.

Environmental Impact of Violations

17. Excess emissions of SO₂ increase the amount of acid rain and public exposure to unhealthy levels of SO₂. SO₂ reacts with other chemicals in the air to form tiny sulfate particles. Exposure to high levels of SO₂ gas and particles can cause respiratory illness, aggravate existing heart disease, and lead to premature death.

Date

9/17/12


 George T. Czerniak
 Acting Director
 Air and Radiation Division

CERTIFICATE OF MAILING

I, Loretta Shaffer, certify that I sent a Notice and Finding of Violation, No. EPA-5-12-05-IN, by Certified Mail, Return Receipt Requested, to:

Tim Stickler
Environmental Supervisor
New Energy Corporation
3201 West Calvert Street
South Bend, Indiana 46680-2289

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

Phil Perry
Office of Environmental Air Section
Indiana Department of Environmental Management
100 North Senate Avenue, Room 1001
Indianapolis, Indiana 46206-6015

On the 19 day of September 2012.



CERTIFIED MAIL RECEIPT NUMBER: 7009 1680 0000 7667 6229