



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

MAR 26 2008

REPLY TO THE ATTENTION OF:

(AE-17J)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Barbara J. Mantarro
Principal Scientist, Environmental Stewardship
The Kellogg Company
235 Porter Street
Battle Creek, Michigan 49014

Dear Ms. Mantarro:

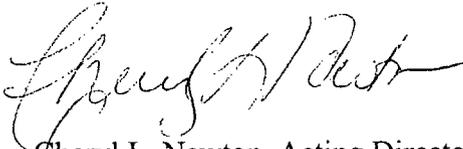
This is to advise you that the U.S. Environmental Protection Agency is issuing the enclosed Notice and Finding of Violation (NOV/FOV) to The Kellogg Company (you or Kellogg). We find that you are violating the Prevention of Significant Deterioration requirements under Section 165 of the Clean Air Act (CAA or the Act), 42 U.S.C. § 7475, the Title V operating permit requirements under Section 502 of the Act, 42 U.S.C. § 7661a, and the Michigan State Implementation Plan (SIP) at your Battle Creek, Michigan facility.

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. Section 113 of the CAA provides you with the opportunity to request a conference with us to discuss the violations cited 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 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 contacts in this matter are Jamie Iatropulos and Kathy Memmos. You may call them at (312) 886-6024 and (312) 353-4293, respectively, if you wish 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 yours,

A handwritten signature in cursive script, appearing to read "Cheryl L. Newton".

Cheryl L. Newton, Acting Director
Air and Radiation Division

Enclosure

cc: Mary Douglas, MDEQ
John Etzcorn, Kellogg Company

**United States Environmental Protection Agency
Region 5**

IN THE MATTER OF:)	
)	
The Kellogg Company)	NOTICE AND FINDING OF
Battle Creek, Michigan)	VIOLATION
)	
Proceedings Pursuant to)	EPA-5-08-MI-12
the Clean Air Act,)	
42 U.S.C. §§ 7401 <i>et seq.</i>)	
)	

NOTICE OF VIOLATION

The Kellogg Company (you or Kellogg) owns and operates a breakfast cereal manufacturing facility located in Battle Creek, Michigan (the facility). The U.S. Environmental Protection Agency is sending this Notice and Finding of Violation (NOV/FOV) to you for violating the Clean Air Act (CAA or the Act) and its implementing regulations. An explanation of the violations is provided below.

Section 113 of the CAA provides you with the opportunity to request a conference with us to discuss the violations cited in this 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.

Explanation of Violations

1. Violation of the Federally Enforceable Michigan State Implementation Plan Permit to Install Requirements:

- a. On May 6, 1980, EPA approved Michigan Administrative Code (MAC) Rule 336.1201 as part of the federally enforceable Michigan State Implementation Plan (SIP); the rule became effective on that same date. 45 *Fed. Reg.* 29790.
- b. The federally enforceable SIP at MAC Rule 336.1201, provides, in relevant part: "A person shall not install, construct, reconstruct, relocate, or alter any process, fuel-burning or refuse-burning equipment, or control equipment pertaining thereto, which may be a source of an air contaminant, until a permit is issued"

This shall be known as a permit to install and shall cover construction, reconstruction, relocation, and alteration of equipment where such is involved.”

- c. In or about February 1993, Kellogg altered the facility by installing and constructing a coating line applicator and dryer (EU-DXCoatApp and EU-DXCoatDry) that caused an increase in potential emissions of volatile organic compounds.
- d. By at least 2001, Kellogg began using flavor containing volatile organic compounds on the coating line (EU-DXCoatApp) that caused an increase in emissions and potential emissions of volatile organic compounds.
- e. Kellogg is in violation of MAC R 336.1201 by failing to obtain a permit to install prior to altering the facility by installing a coating line applicator and dryer (EU-DXCoatApp and EU-DXCoatDry) that caused an increase in emissions and potential emissions of volatile organic compounds.

2. Violation of the CAA's Permit Programs Requirements:

- a. EPA granted full approval to the Michigan Title V operating permit program, effective November 30, 2001. 66 *Fed. Reg.* 62949.
- b. 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 person may operate a source subject to Title V except in compliance with a Title V operating permit.
- c. The Michigan Department of Environmental Quality issued a Title V operating permit (Permit Number 199600315) to the facility, effective on July 1, 2002.
- d. Kellogg's Title V operating permit, under condition II.B of Table F-1.6 FG-Rule290, limits emissions from EU-DXCoatDry (DX cereal manufacturing line coating dryer) to less than 1,000 pounds per month uncontrolled or 500 pounds per month controlled.
- e. Kellogg violated and is in violation of the emission limits for emissions unit EU-DXCoatDry provided under condition II.B of Table F-1.6 FG-Rule290 of its Title V operating permit from 2002 to the present.
- f. Kellogg's Title V operating permit provides that emissions unit EU-DXCoatDry is exempt from the requirement to obtain a permit to install under MAC Rule 336.1201 so long as the emissions unit meets the emissions limits provided under condition II.B of Table F-1.6 FG-Rule290.

- g. Kellogg violated and is in violation of the emissions limits for emission unit EU-DXCoatDry provided under II.B of Table F-1.6 FG-Rule290 of its Title V operating permit and therefore violated and is in violation of MAC Rule 336.1201 by failing obtain a permit to install for the emissions unit.

3. Violation of the CAA's Prevention of Significant Deterioration Requirements:

- a. The Prevention of Significant Deterioration (PSD) requirements of the Act, 42 U.S.C. § 7470-7492, provide that no major emitting facility may be constructed unless, among other things, a permit has been issued, and the facility is subject to best available control technology. Section 165 of the Act, 42 U.S.C. § 7475.
- b. The term "major emitting facility" includes any source with the potential to emit two hundred and fifty tons per year or more of any air pollutant. Section 169(1) of the Act, 42 U.S.C. 7479(1).
- c. The term "construction" includes the modification of any source or facility. Section 169(2)(C) of the Act, 42 U.S.C. § 7479(2)(C).
- d. The term "modification" means any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted. Section 111(4) of the Act, 42 U.S.C. § 7411(4).
- e. Because the State of Michigan did not submit a SIP meeting the PSD requirements of the CAA, EPA incorporated the provisions of 40 C.F.R. 52.21, except paragraph (a)(1), into the Michigan SIP. 40 C.F.R. § 52.1180.
- f. 40 C.F.R § 52.21(i) (1993) provides that no major stationary source or major modification shall begin actual construction without a permit.
- g. 40 C.F.R. 52.21(j)(3) (1993) provides that a source undertaking major modification shall apply best available control technology for each pollutant subject to regulation under the Act which would result in a significant net emissions increase at the source as a result of the physical change or change in the method of operation.
- h. "Major modification" is defined at 40 C.F.R. § 52.21(b)(2)(i) (1993) as "any physical change in or change in the method of operation of a major stationary source that would result in a significant net emission increase of any pollutant subject to regulation under the Act."

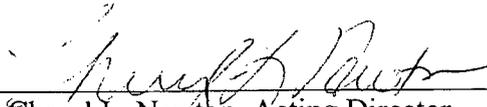
- i. The term “significant,” at 40 C.F.R. 52.21(b)(23) (1993), means, in reference to a net emissions increase or the potential to emit, a rate of emissions that would equal or exceed 40 tons per year of volatile organic compounds.
- j. In 1993 Calhoun County was designated as nonattainment/incomplete data for ozone. 40 C.F.R. § 82.323 (1993). In 1995, EPA corrected the previous ozone designation for Calhoun County to attainment/unclassifiable for ozone. 60 *Fed. Reg.* 40297 and 61 *Fed. Reg.* 5707.
- k. Kellogg’s facility constitutes “major stationary source” because it emits or has the potential to emit 250 tons per year or more of volatile organic compounds, carbon monoxide, nitrogen oxides, and sulfur dioxide.
- l. In or about February 1993, Kellogg made a physical change to, and a change in the method of operations of, the facility by the construction of a coating line applicator and dryer (EU-DXCoatApp and EU-DXCoatDry).
- m. The physical and operational changes caused a significant net emissions increase of volatile organic compounds.
- n. Kellogg is in violation of the Section 165 of the Act, 42 U.S.C. § 7475, and 40 C.F.R. §§ 52.21(i) and (j) by making a major modification to the facility without obtaining a PSD permit and by not installing best available control technology to control emissions of volatile organic compounds resulting from the physical change to, and change in the method of operation of, the facility by the construction of a coating line applicator and dryer (EU-DXCoatApp and EU-DXCoatDry).

Environmental Impact of Violations

- 1. The purpose of the requirement to obtain permits to install is, among other things, to ensure emissions from the source minimized and are properly controlled through the installation of best available control technology.
- 2. Emission of volatile organic compounds contributes to the formation of ground-level ozone and smog. Breathing ozone can trigger a variety of health problems including chest pain, coughing, throat irritation, and congestions. It can worsen bronchitis, emphysema, and asthma. Ground-level ozone also can reduce lung function and inflame the linings of the lungs. Repeated exposure may permanently scar lung tissue. Ground-level ozone can have detrimental effects on plants and ecosystems. These effects include: interfering with the ability of sensitive plants to produce and store food, making them more susceptible to certain diseases, insects, other pollutants, competition and harsh weather; damaging the leaves of trees and other plants, negatively impacting the

appearance of urban vegetation, national parks, and recreation areas; and reducing crop yields and forest growth, potentially impacting species diversity in ecosystems.

3/26/08
Date


Cheryl L. Newton, Acting Director
Air and Radiation Division

CERTIFICATE OF MAILING

I, Shanee Rucker, certify that I sent a Notice and Finding of Violation, No. EPA-5-08-MI-12, by Certified Mail, Return Receipt Requested, to:

Barbara J. Mantarro
Director of Environmental Quality
The Kellogg Company
235 Porter Street
Battle Creek, Michigan 49014

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

Mary Douglas, District Supervisor
Michigan Department of Environmental Quality
Kalamazoo District Office
7953 Adobe Road
Kalamazoo, Michigan 49009-5026

John Etzcorn
Environmental Program Manager
The Kellogg Company
235 Porter Street
Battle Creek, Michigan 49014

on the 26th day of March, 2008.

Shanee Rucker
Shanee Rucker
Administrative Assistant
AECAS (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0006 0185 9570