



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

REPLY TO THE ATTENTION OF:

AUG 21 2009

AE-17J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. James R. King
Plant Manager
Lone Star Industries, Inc.,
d/b/a Buzzi Unicem USA, Inc.
Oglesby Cement Plant
490 Portland Avenue, P.O. Box 130
Oglesby, IL 61348

RE: Notice and Finding of Violations issued to Lone Star Industries, Inc., d/b/a Buzzi Unicem USA, Inc.

Dear Mr. King:

The U. S. Environmental Protection Agency is issuing the enclosed Notice of Violations and Finding of Violations (Notice) to Lone Star Industries, Inc., d/b/a Buzzi Unicem USA, Inc., (Buzzi). This Notice is issued in accordance with Section 113(a) of the Clean Air Act (the Act), 42 U.S.C. § 7413(a).

EPA has determined that Buzzi is violating the following provisions of the Act at its Oglesby Portland Cement plant, located in Oglesby Illinois: Prevention of Significant Deterioration requirements promulgated under Part C of the Act, 42 U.S.C. §§ 7470 *et seq.*; the Illinois Nonattainment New Source Review requirements, approved by EPA as part of the Illinois State Implementation Plan, under Section 110 of the Act, 42 U.S.C. § 7410; and Title V of the Act, 42 U.S.C. §§ 7661 *et seq.*

EPA is offering you an opportunity to confer with us about the violations cited in the Notice. The conference will give you an opportunity to present information on the specific findings of violations, and the steps you will take to bring the facility into compliance. Please plan for your technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference.

You may contact Mark Ackerman at (312) 353-4145 to request a conference. You should make your request for a conference no later than five calendar days after you receive this letter, and we should hold any conference within 15 calendar days of your receipt of this letter.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Cheryl L. Newton". The signature is fluid and cursive, with a large initial "C" and "N".

Cheryl L. Newton
Director
Air and Radiation Division

Enclosure

cc: Ray Pilapil, Manager
Compliance and Enforcement Section
Illinois Environmental Protection Agency

Katherine D. Hodge, Esq.
Hodge Dwyer Zeman

grandfathered facilities to install modern pollution control devices whenever the unit is proposed to be modified in such a way that its emissions may increase.

2. The Prevention of Significant Deterioration (PSD) provisions of Part C 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 or unclassified 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)(2)(i). To obtain this permit, the source must, among other things, undergo a technology review and apply the 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.

3. 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 (NAAQS) in the State.

4. 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).

5. On June 19, 1978, EPA promulgated PSD regulations pursuant to Part C of Title I of the Act. 43 Fed. Reg. 26403 (June 19, 1978). These regulations, codified at 40 C.F.R. § 52.21, apply to any major stationary source or major modification that would be constructed in an area designated as attainment or unclassified under the Act.

6. The PSD regulations, at 40 C.F.R. § 52.21(a), state that, "[t]he provisions of this section are applicable to any [SIP] which has been disapproved with respect to prevention of significant deterioration of air quality in any portion of any State where the existing air quality is better than the national ambient air quality standards."

7. On August 7, 1980, EPA disapproved Illinois' proposed PSD program and then incorporated by reference the PSD regulations of 40 C.F.R. § 52.21(b) through (w) into the Illinois SIP. 40 C.F.R. § 52.738 (45 Fed. Reg. 52676, 52741). The Federal PSD regulations appearing at 40 C.F.R. § 52.21 are still incorporated into and part of the Illinois SIP. On January 29, 1981, EPA delegated to the Illinois Environmental Protection Agency the partial authority to review and process PSD permit applications, and to implement the federal PSD program. 46 Fed. Reg. 9584. On December 24, 2003, EPA issued a final rule incorporating newly promulgated paragraphs of EPA's "New Source Review Reform" rule into the Illinois SIP. 68 Fed. Reg. 74489.

8. The PSD regulations at 40 C.F.R § 52.21(2)(iii) provide that “no stationary source or modification to which the requirements of paragraphs (j) through (r) of this section apply shall begin actual construction without a permit that states that the stationary source or modification would meet those requirements.”

9. The PSD regulations define “major modification” as “any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase” of a regulated pollutant. 40 C.F.R § 52.21(b)(2)(i).

10. The PSD regulations at 40 C.F.R. § 52.23 state, among other things, that failure to comply with any provision of 40 C.F.R. Part 52, or with an approved regulatory provision of a SIP, shall render the person or governmental entity in violation of a requirement of an applicable implementation plan and subject to enforcement action under section 113 of the Act.

Nonattainment New Source Review

11. The Nonattainment New Source Review (NNSR) provisions of Part D of the Act require preconstruction review and permitting for modifications of stationary sources located in non-attainment areas. See 42 U.S.C. §§ 7470-7492. Pursuant to applicable regulations, if a major stationary source located in a nonattainment area is planning to make a major modification, then that source must obtain a NNSR permit before beginning actual construction. See Section 173 of the Act, 42 U.S.C. § 7503. To obtain this permit, the source must, among other things: undergo a technology review and be required to comply with the Lowest Achievable Emission Rate (LAER).

12. On December 17, 1992, EPA approved the Illinois NNSR SIP rules, 35 Illinois Administrative Code (IAC) Part 203. 57 FR 59928. Illinois submitted and EPA approved revisions to this rule on September 27, 1995 (60 Fed. Reg. 49780) and May 13, 2003 (68 Fed. Reg. 25504).

13. The Illinois NNSR SIP prohibits construction or major modification of a major stationary source in a nonattainment area without first obtaining a permit in accordance with NNSR requirements, which includes compliance with LAER. See 35 IAC 203.201 *et seq.* In this context, a “major modification” means “any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant which is being regulated under the Clean Air Act.” 35 IAC 203.207. It does not, however, include routine maintenance, repair, and replacement. *Id.* A “major stationary source” is also defined in this context as “any stationary source of air pollutants which emits, or has the potential to emit, one hundred (100) tpy or more of any air pollutant subject to regulation under the Clean Air Act.” *Id.*

Title V Requirements

14. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), provides that no source may operate without a Title V permit after the effective date of any permit program approved or promulgated under Title V of the Act. EPA first promulgated regulations governing state operating permit programs on July 21, 1992. *See* 57 Fed. Reg. 32295; 40 C.F.R. Part 70.

15. Section 503 of the CAA, 42 U.S.C. § 7661b, sets forth the requirement to timely submit an application for a permit, including information required to be submitted with the application.

16. Section 504(a) of the CAA, 42 U.S.C. § 7661c(a), requires that each Title V permit include enforceable emission limitations and standards, a schedule of compliance, and other conditions necessary to assure compliance with applicable requirements, including those contained in a state implementation plan.

17. 40 C.F.R. § 70.1(b) provides that: "All sources subject to these regulations shall have a permit to operate that assures compliance by the source with all applicable requirements."

18. 40 C.F.R. § 70.2 defines "applicable requirement" to include "(1) [a]ny standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the Act that implements the relevant requirements of the Act, including revisions to that plan promulgated in part 52 of this chapter . . ."

19. 40 C.F.R. § 70.7(b) provides that no source subject to 40 C.F.R. Part 70 requirements may operate without a permit as specified in the Act.

20. 40 C.F.R. § 70.5(a) and (c) require timely and complete permit applications for Title V permits with required information that must be submitted and 40 C.F.R. § 70.6 specifies required permit content.

21. 40 C.F.R. § 70.5(b) provides that: "Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit."

Illinois' Title V Requirements

22. EPA gave interim approval of Illinois' Title V program on March 7, 1995. 60 Fed. Reg. 12478. U.S. EPA fully approved the Illinois Title V program on December 4, 2001. 66 Fed. Reg. 62946.

23. The 415 Illinois Compiled Statutes 5/39.5 contains the Illinois Clean Air Act Permit Program (CAAPP) pursuant to Title V of the Act. The regulations governing the Illinois Title V permitting program are codified at 35 IAC 201.

24. 415 ILCS 5/39.5.5(c) provides that an owner or operator of a CAAPP source shall submit its complete CAAPP application consistent with the Illinois Protection Act and applicable requirements.

25. 415 ILCS 5/39.5.5(c) provides that to be deemed complete, a CAAPP application must provide all information . . . sufficient to evaluate the subject source and its application and to determine all applicable requirements, pursuant to the Act and regulations there under, the Illinois Protection Act and regulations there under.

26. 415 ILCS 5/39.5.6 provides that it shall be unlawful for any person to violate any terms or conditions of a permit issued under this Section, to operate any CAAPP source except in compliance with a permit issued by the Agency under this Section or to violate any other applicable requirements and that all terms and conditions of a permit issued under this section are enforceable by U.S. EPA and citizens under the Act, except those, if any, that are specifically designated as not being federally enforceable in the permit pursuant to paragraph 7(m) of this Section.

27. 35 IAC 201.208 provides that an applicant for a CAAPP permit shall supplement its application with any information for an emission unit of the source that is needed to determine the applicability of any applicable requirement or to set forth in a permit any applicable requirement, when such information is requested by the Agency, pursuant to Section 39.5(5)(g) of the Act, or when the applicant becomes aware that such information has not been submitted or that incorrect information has been submitted, pursuant to 39.5(5)(i) of the Act.

B. FACTUAL BACKGROUND

28. Buzzi is a corporation, authorized to do business in Illinois.

29. Buzzi is a "person," as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

30. At times relevant to this Notice, Buzzi has been the owner and/or operator of a Portland cement plant, located in Oglesby, Illinois (the Oglesby Plant), at which it operates one dry kiln for cement production, Kiln 3.

31. The Oglesby Plant is located in La Salle County, which in 1991-1996 was classified as a partial nonattainment area for PM₁₀ (particles with an aerodynamic diameter less than or equal to a nominal 10 microns). From 2004-2008, La Salle County was designated as a nonattainment area for the 8-hour ozone standard.

32. The Oglesby Plant has a potential to emit of greater than 100 tons per year of NO_x, SO₂, PM, and PM₁₀.

33. The Oglesby Plant is a “major stationary source” within the meaning of 40 C.F.R. § 52.21(b)(1)(i)(a); and a “major emitting facility” within the meaning of Section 169(1) of the Act, 42 U.S.C. § 7479(1).

34. Between 1990 and 2002, various physical changes or changes in the method of operation were made at the Oglesby Plant. A description of the changes is included in Appendix A.

C. NOTICE AND FINDING OF VIOLATIONS

Violations of the Prevention of Significant Deterioration Provisions and Nonattainment New Source Review

35. Each of the projects identified in Appendix A caused a significant net emissions increase, as defined in 40 C.F.R. § 52.21 and the Illinois SIP, of SO₂, NO_x, PM, and/or PM₁₀

36. Each of the projects identified in Appendix A constitutes a “major modification,” as that term is defined in 40 C.F.R. § 52.21 and the Illinois SIP.

37. For each of the projects identified in Appendix A, Buzzi failed to obtain a PSD or NNSR permit, as required by 40 C.F.R. § 52.21 and the Illinois SIP.

38. Buzzi violated and continues to violate Section 165 of the Act, 42 U.S.C. § 7475, Sections 173 of the Act, 42 U.S.C. § 7503, 40 C.F.R. § 52.21, and the Illinois SIP by constructing major modifications to a existing major source at the Oglesby facility without, in part, applying for or obtaining NNSR and/or PSD permits and operating the modified facilities without installing LAER and/or BACT.

Violations of the Title V – Permit Program

39. Buzzi failed and/or continues to fail to submit timely and complete Title V permit applications for the Oglesby facility with information pertaining to the modifications identified in Appendix A and with information concerning all

applicable requirements, including, but not limited to, the requirement to apply, install and operate BACT or LAER for NO_x, SO₂, PM, and PM₁₀ at the facility. Buzzi also failed to supplement or correct the Title V permit applications for this facility in violation of Sections 502, 503 and 504 of the Act, 42 U.S.C. §§ 7661a, 7661b and 7661c; the regulations at 40 C.F.R. Part 70, including, but not limited to, 40 C.F.R. §§ 70.1(b), 70.5, 70.6 and 70.7(b); and the Illinois Title V provisions at 415 ILCS 5/39.5 and 35 IAC 201.

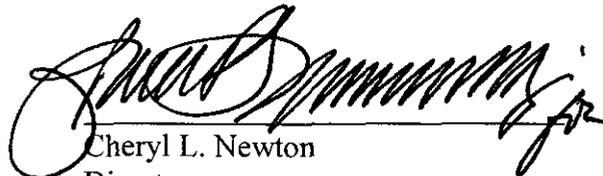
D. ENFORCEMENT

40. 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.

41. 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 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.

E. EFFECTIVE DATE

Dated: 8/21/09


Cheryl L. Newton
Director
Air and Radiation Division

CERTIFICATE OF MAILING

I, Betty Williams, certify that I sent a Notice of Violation and Finding of Violation, No. **EPA-5-09-17-IN/IL**, by Certified Mail, Return Receipt Requested, to:

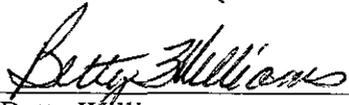
Mr. James R. King
Plant Manager
Oglesby Cement Plant
Lone Star Industries, Inc.,
d/b/a Buzzi Unicem USA, Inc
490 Portland Avenue, P.O. Box 130
Oglesby, IL 61348

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

Ray Pilapil, Manager
Bureau of Air
Compliance and Enforcement Section
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62702
Excluding Appendix A

Katherine D. Hodge Esq.
HODGE DWYER ZEMAN
3150 Roland Avenue
P.O. Box 5776
Springfield, Illinois 62705-5776
Excluding Appendix A

On the 24th day of August, 2009



Betty Williams
Administrative Program Assistant
AECAS IL/IN

Certified Mail Receipt Number: 70010320 0005 89160224