



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

January 11, 2013

CERTIFIED MAIL – RETURN RECEIPT REQUESTED: 7007 3020 0002 5102 7792

Mr. Steve Hubertus, Branch Manager
Orion Engineered Carbons, LLC
19440 FM 1559, Hwy 136
Borger, Texas 79007

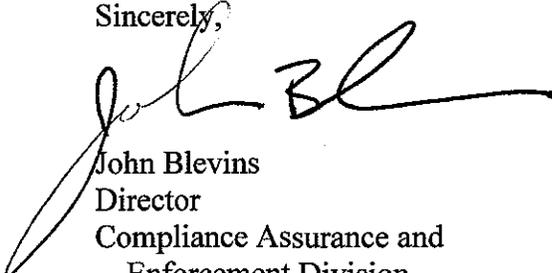
Subject: Notice and Finding of Violation - Orion Engineered Carbons, Carbon Black Plant
Borger, Hutchinson County, Texas

Dear Mr. Hubertus:

Enclosed is a Notice and Finding of Violation (Notice) pursuant to Section 113(a) of the Clean Air Act (CAA), 42 U.S.C. § 7413(a). This Notice is issued to Orion Engineered Carbons (Orion) for violations of the Prevention of Significant Deterioration and Title V requirements under the CAA and the Texas State Implementation Plan at its Borger, Texas facility. In accordance with Confidential Business Information (CBI) regulations, we have not included any CBI in the Notice.

Please note the opportunity to confer outlined in the Notice. Any request to confer should be directed to Jan Gerro, Assistant Regional Counsel. Ms. Gerro can be reached at (214) 665-2121.

Sincerely,



John Blevins
Director
Compliance Assurance and
Enforcement Division

Enclosure

cc: Jack Clem, CEO
Orion Engineered Carbons, LLC

Kellie Ortega, Esq.
Air Enforcement Branch
U.S. Environmental Protection Agency, HQ

Michael De La Cruz
Air Enforcement Section Manager
Texas Commission on Environmental Quality

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS**

IN THE MATTER OF:)	
)	
ORION ENGINEERED CARBONS, LLC)	NOTICE OF VIOLATION
)	
19440 FM 1559, HWY 136)	
BORGER, TEXAS 79007)	

NOTICE AND FINDING OF VIOLATION

This Notice and Finding of Violation (Notice) is issued to Orion Engineered Carbons, LLC (Orion) for violations of the Clean Air Act (CAA or the Act), 42 U.S.C. §§ 7401 *et seq.*, at its carbon black manufacturing plant located in Borger, Hutchinson County, Texas. Specifically, Orion has violated the Prevention of Significant Deterioration (PSD) and the New Source Review (NSR) permitting requirements of the Texas State Implementation Plan (SIP) at its Borger, Texas facility.

This Notice is issued pursuant to section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1). Section 113(a) of the CAA requires the Administrator of the United States Environmental Protection Agency (EPA) to notify any person in violation of a SIP or permit of the violations. Also included are findings of violations of the federal regulations. The authority to issue this Notice has been delegated to the Regional Administrator of EPA Region 6, and re-delegated to the Director, Compliance Assurance and Enforcement Division, EPA Region 6.

A. STATUTORY AND REGULATORY BACKGROUND

1. The Clean Air Act is designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population. Section 101(b)(1) of the Act, 42 U.S.C. § 7401(b)(1).

The National Ambient Air Quality Standards

2. Section 108(a) of the Act, 42 U.S.C. § 7408(a), requires the Administrator of EPA to identify and prepare air quality criteria for each air pollutant, emissions of which may endanger public health or welfare, and the presence of which results from numerous or diverse mobile or stationary sources. For each such "criteria" pollutant, Section 109 of the Act, 42 U.S.C. § 7409, requires EPA to promulgate national ambient air quality standards (NAAQS) requisite to protect the public health and welfare.

3. Pursuant to Sections 108 and 109, 42 U.S.C. §§ 7408 and 7409, EPA has identified nitrogen oxides (NO_x), sulfur dioxide (SO₂), carbon monoxide (CO) and particulate matter less than 10 micrometers (PM₁₀) as criteria pollutants, and has promulgated NAAQS for such pollutants. *See* 40 C.F.R §§ 50.4 - 50.17. Volatile organic compounds (VOC) are precursors to the formation of ozone. *See* 40 C.F.R. § 52.21(b)(23)(i).
4. Under Section 107(d) of the Act, 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. An area that meets the NAAQS for a particular pollutant is termed an “attainment” area with respect to such pollutant. An area that does not meet the NAAQS for a particular pollutant is termed a “nonattainment” area with respect to such pollutant. An area that cannot be classified as either “attainment” or “nonattainment” with respect to a particular pollutant due to insufficient data is termed “unclassifiable” with respect to such pollutant.
5. At all times relevant to this NOV, Hutchinson County, the area in which the Facility is located, has been classified as either attainment or unclassifiable for all criteria pollutants.

Prevention of Significant Deterioration

6. Part C of Title I of the CAA (Sections 160 through 169) establishes the federal Prevention of Significant Deterioration (PSD) permitting program and requires each state to include a PSD program as part of its SIP.
7. Section 165(a) of the CAA, 42 U.S.C. § 7475(a), among other things, prohibits the construction and operation of a “major emitting facility” in an area designated as attainment or unclassifiable for the applicable National Ambient Air Quality Standards (NAAQS), without first obtaining a PSD permit and installing Best Available Control Technology (BACT).
8. Section 169(1) of the Act, 42 U.S.C. § 7479(1), designates carbon black plants which emit or have the potential to emit one hundred tons per year or more of any pollutant to be “major emitting facilities.”
9. Section 169(2)(C) of the Act, 42 U.S.C. § 7479(2)(C), defines “construction” to include “modification” (as defined in Section 111(a) of the Act). “Modification” is defined in Section 111(a) of the Act, 42 U.S.C. § 7411(a), to be “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.”

10. Sections 110(a) and 161 of the Act, 42 U.S.C. §§ 7410(a) and 7471, require each state to adopt a SIP that contains emission limitations and such other measures as may be necessary to prevent significant deterioration of air quality in areas designated as attainment or unclassifiable.
11. A state may comply with Sections 110(a) and 161 of the Act, 42 U.S.C. §§ 7410(a) and 7471, by having its own PSD regulations, which must be at least as stringent as those set forth at 40 C.F.R. § 51.166, approved by EPA as part of its SIP. If a state does not have a PSD program that has been approved by EPA and incorporated into its SIP, the federal PSD regulations set forth at 40 C.F.R. § 52.21 may be incorporated by reference into the SIP. 40 C.F.R. § 52.21(a).
12. On May 31, 1972, EPA approved the Texas Air Pollution Control Implementation Plan, which was later redesignated the State Implementation Plan for Texas (hereinafter referred to generally as the "Texas SIP"). *See* 37 Fed. Reg. 10,895; 40 C.F.R. § 52.2299.
13. On June 19, 1978, EPA established regulations implementing the federal PSD program at 40 C.F.R. § 52.21 and requirements for SIP approved programs at 40 C.F.R. § 52.166. *See* 43 Fed. Reg. 26,403 (June 19, 1978). Since that time, the PSD regulations have been revised, with subsequent revisions incorporated under 40 C.F.R. § 52.21.
14. On June 24, 1992, EPA approved the Texas PSD program, which was effective on July 24, 1992. *See* 57 Fed. Reg. 28,093 (June 24, 1992); 40 C.F.R. §§ 52.2299 (c) and 52.2303. Effective October 20, 1997, Texas' PSD regulations were recodified under Title 30, Section 116.160, of the Texas Administrative Code. *See* 30 TAC §116.111; 62 Fed. Reg. 44,085 (Aug. 19, 1997).
15. Pursuant to the rules approved by EPA for the Texas SIP and effective October 20, 1997, the Texas PSD program incorporated by reference the federal PSD rules at 40 C.F.R. § 52.21 (as amended June 3, 1993 and effective June 3, 1994) and required "each proposed ... major modification in an attainment or unclassifiable area" to comply with the federal regulations. *See* 30 TAC §116.111; *see also*, 40 C.F.R. § 52.21.
16. In addition, the Texas PSD program requires "before any actual work is begun on the facility, any person who plans to...engage in the modification of any existing facility which may emit air contaminants into the air of Texas must obtain a permit to construct pursuant to 116.111." 30 TAC § 116.110(a)(1).

17. Under the PSD regulations, “major stationary source” is defined to include carbon black facilities which emit or have the potential to emit 100 tons per year or more of any air pollutant subject to regulation. 40 C.F.R. § 52.21(b)(1)(i)(b); *see also*, 30 TAC § 116.12.
18. Under the PSD regulations, “major modification” is defined as “any physical change in or change in the method of operation of a major stationary source that would result in: a significant emissions increase (as defined in paragraph (b)(40) of this section) of a regulated NSR pollutant;... and a significant net emissions increase of that pollutant from the major stationary source.” 40 C.F.R. § 52.21(b)(2)(i); *see also*, 30 TAC § 116.12.
19. “Significant” is defined in relevant part to mean, “in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, at a rate of emissions that would equal or exceed any of the following rates:”

Nitrogen oxides (NO _x):	40 tons per year (tpy)
Sulfur dioxide (SO ₂):	40 tpy
Carbon monoxide (CO):	100 tpy
Volatile organic compounds (VOC):	40 tpy
Hydrogen sulfide (H ₂ S):	10 tpy
Total reduced sulfur (TRS) (including H ₂ S)	10 tpy
Particulate Matter – 10	15 tpy
Particulate Matter – 2.5	10 tpy

40 C.F.R. § 52.21(b)(23)(i); *see also*, 30 TAC § 116.160.

20. Under the PSD regulations, “net emissions increase” means the amount by which the sum of the following exceeds zero: “any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source” and “any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.” 40 C.F.R. § 52.21(b)(3)(i); *see also*, 30 TAC § 116.12.
21. The PSD regulations define “actual emissions” as the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. 30 TAC § 116.112. In addition, for any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date. 30 TAC § 116.12.
22. “Stationary source” is defined to mean “any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation.” 40 C.F.R. § 52.21(b)(5); *see also* 30 TAC § 116.12.

23. "Building, Structure, Facility or Installation" are defined to mean "all of the pollutant emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control)" 40 C.F.R. § 52.21(b)(6); *see also* 30 TAC § 116.12.
24. "Commence" [a]s applied to construction of a major stationary source or major modification, means that the owner or operator has all necessary preconstruction approvals or permits and either has: (A) begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or (B) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time. 40 C.F.R. § 52.21(b)(8); *see also* 30 TAC § 116.12.
25. "Construction" is defined to mean "any physical change or change in the method or operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions." 40 C.F.R. § 52.21(b)(8); *see also* 30 TAC § 116.12.
26. "Begin actual construction" is defined, in relevant part, to mean, "in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures." 40 C.F.R. § 52.21(b)(11); *see also* 30 TAC § 116.12.
27. If a source is a major stationary source in an attainment or unclassifiable area planning to construct a major modification under the foregoing definitions, then it is subject to the requirements contained in 30 TAC § 116.160.
28. A major stationary source subject to the requirements of 30 TAC § 116.160 must, among other things, perform an analysis of source impacts, perform air quality modeling and analysis, apply BACT, and allow for meaningful public participation in the process.

Federal Title V Requirements

29. 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. EPA promulgated regulations governing the Federal operating permit program on July 1, 1996. *See* 61 Fed. Reg. 34228; 40 C.F.R. Part 71.
30. Section 503 of the CAA, 42 U.S.C. § 7661b, sets forth the requirement to submit a timely, accurate, and complete application for a permit, including information required to be submitted with the application.
31. 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.
32. 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." *See also*, 30 TAC § 122.120(a) and 30 TAC § 122.121.
33. 40 C.F.R. § 70.2 defines "applicable requirement" to include "(1) Any 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 . . ." *See also*, 30 TAC § 122.10(2).
34. 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. *See also*, 30 TAC § 122.121.
35. 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. *See also*, 30 TAC §§ 122.130(b)(2), 122.132(a) and (b), 122.133, and 122.134.
36. 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.” *See also*, 30 TAC §§ 122.132, 122.136 and 122.142.

Texas’ Title V Requirements

37. EPA granted full approval of the Texas Title V program on November 30, 2001. 40 C.F.R. Part 70, Appendix A. Texas’ Title V program became effective on that date. *See* 61 Fed. Reg. 39597.
38. The Texas regulations governing the Title V permitting program are codified at Title 30 of the Texas Administrative Code, and are federally enforceable pursuant to Section 113(a)(3). The Texas regulations provide that no major 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. *See* 30 TAC § 122.
39. 30 TAC § 122.121 requires that, even “[i]f a permit to construct is issued by the State of Texas, the person in charge of the facility must apply for an operating permit pursuant to 30 TAC § 122.134 of this title ... within 60 days after the facility has begun operation, unless this 60-day period has been extended by the Executive Director.” *See* 30 TAC § 122.121.
40. 30 TAC § 122.501, and 30 TAC § 122.502 subsequently provides that the granting of a permit to operate is conditioned upon the facility demonstrating that:
 - a. The facility is complying with the Rules and Regulations of the State of Texas and the intent of the Texas Clean Air Act.
 - b. The facility has been constructed and is being operated in accordance with the requirements and conditions contained in the permit to construct.
 - c. The facility is being operated in accordance with any applicable new source performance standards promulgated by the EPA pursuant to authority granted under Section 111 of the CAA, as amended.
 - d. The facility is being operated in accordance with any applicable emission standard for hazardous air pollutants promulgated by the EPA pursuant to authority granted under Section 112 of the CAA, as amended.

B. FACTUAL BACKGROUND

41. Orion owns and operates a carbon black manufacturing facility in Borger, Texas (Facility).

42. Orion is a privately owned company. Orion is hereinafter referred to as "Respondent."
43. Respondent is a "person" within the meaning of sections 113(a) and 502 of the CAA, 42 U.S.C. §§ 7413(a) and 7661a, and as defined in section 302(e) of the CAA, 42 U.S.C. § 7602(e).
44. At the Facility, Respondent operates four carbon black units (Units B-1, B-2, B-3, and B-4). Respondent partially combusts and thermally decomposes a heavy oil feed in a low oxygen reactor under controlled conditions, producing solid carbon particles which are recovered as the carbon black product. The carbon black is then dried, pelletized, and packaged.
45. The Facility meets the definition of a "major stationary source" in 40 C.F.R. § 52.21(b)(1)(i)(a) because it is a carbon black plant that has the potential to emit in excess of 100 tons per year of the following regulated pollutants: NO_x, SO₂, CO, VOC, H₂S, TRS, and PM₁₀.
46. Hutchinson County is designated as either attainment or unclassifiable for all criteria pollutants. *See* 40 C.F.R. § 81.344.
47. The Facility currently operates under a Title V Permit (Permit Number: O-1661) that was issued by the Texas Commission on Environmental Quality (TCEQ) on February 24, 2003, and renewed on February 22, 2008. The Facility also operates under a PSD Permit (PSD-TX-416) that was first issued by the Texas Air Control Board on June 11, 1982; revised on November 30, 1984, and October 3, 2002; renewed on December 10, 2004, and revised on February 22, 2008.
48. By information request letter issued pursuant to the authority of Section 114 of the Act, 42 U.S.C. § 7414, dated October 29, 2010, EPA required Respondent to submit specific information regarding its carbon black manufacturing facilities located within Region 6. During an inspection of the Facility on March 22, 2012, EPA also required Respondent to submit specific information regarding its carbon black manufacturing facilities.
49. The Respondent provided responses to EPA's information requests on February 3, 2011 and March 3, 2011.

C. VIOLATIONS

50. Upon review of the information provided by Respondent, referenced above in Paragraph 49, EPA Region 6 has concluded that Respondent conducted capital

projects on carbon black units at the Facility which increased the Facility's capacity to produce carbon black.

51. Furthermore, the projects referenced below in Paragraphs 52 through 81 also meet the definition of "major modification" provided under both 40 C.F.R. § 52.21(b)(2)(i) and 30 TAC § 116.12(18), because they represent: a physical change in, or a change in the method of operation of, a major stationary source that resulted in significant emissions increases of a regulated NSR pollutant(s) (specifically NO_x, SO₂, CO, VOC, and PM₁₀), and significant net emissions increases of those pollutants from a major stationary source.

(1) Failure to Obtain PSD Permit Prior to Making a Major Modification to Unit B-1 in or about June 1996 (SO₂ and CO Emissions Increases)

52. Beginning in or about June 1996, Respondent made a modification to Unit B-1 by replacing an air preheater and extending the quench section at Unit B-1. The modification resulted in increased capacity at the unit.
53. This modification triggered "significant" net emissions increases in SO₂ and CO emissions as defined in 40 C.F.R. § 52.21 (b)(23) and 30 TAC § 116.3(a)(11), and therefore is considered a "major modification" as defined in 40 C.F.R. § 52.21(b)(2)(i).
54. In failing to apply for and obtain authority, via necessary construction permits, prior to modifying Unit B-1 at the Facility in or about June 1996, Respondent violated and continues to be in violation of federal and state requirements for preconstruction permits under applicable PSD regulations, specifically those provided under 40 C.F.R. § 52.21(j)-(r), 40 C.F.R. § 52.21(i)(1) and 30 TAC § 116.1(a).
55. In failing to apply BACT to the major modification made to Unit B-1 at the Facility beginning in or about June 1996 and commencing operations each day thereafter without applying necessary technologies under BACT, Respondent continues to accrue violations of applicable federal and state PSD requirements for major modifications, specifically those provided under 40 C.F.R. § 52.21(j)(3), and TAC § 116.3(a)(3).
56. In reinitiating (restart of facility processes after a major modification), and continuing to operate the Facility in or about June 1996, without obtaining or applying for the required permit to operate following completion of the major modification to Unit B-1, Respondent continues to accrue violations of applicable federal and state PSD regulations.

(2) Failure to Obtain PSD Permit Prior to Making a Major Modification to Unit B-1 in or about February 2000 (SO₂ Emissions Increase)

57. In or about February 2000, Respondent made a modification to Unit B-1 by replacing an air preheater with one with a different design. The modification resulted in increased capacity at the unit.
58. The modification triggered a “significant” net emissions increase in SO₂ emissions as defined in 40 C.F.R. § 52.21(b)(23) and 30 TAC § 116.160(a), and therefore is considered a “major modification” as defined in 40 C.F.R. § 52.21(b)(2)(i).
59. In failing to apply for and obtain authority, via necessary construction permits, prior to modifying Unit B-1 at the Facility in or about February 2000, Respondent violated and continues to be in violation of federal and state requirements for preconstruction permits under applicable PSD regulations, specifically those provided under 40 C.F.R. § 52.21(j)-(r), 40 C.F.R. § 52.21(i)(1) and 30 TAC § 116.1(a).
60. In failing to apply BACT to the major modification made to Unit B-1 at the Facility in or about February 2000, and commencing operations each day thereafter without applying necessary technologies under BACT, Respondent continues to accrue violations of applicable federal and state PSD requirements for major modifications, especially those provided under 40 C.F.R. § 52.21(j)(3), and 30 TAC § 116.3(a)(3).
61. In reinitiating and continuing to operate the Facility in 2000, without obtaining or applying for the required permit to operate following completion of the major modification to Unit B-1, Respondent continues to accrue violations of applicable federal and state PSD regulations.

(3) Failure to Obtain PSD Permit Prior to Making a Major Modification, known as the “Borger Growth Plan of 2003”, to the Facility beginning in or about March 2003 (SO₂ Emissions Increase)

62. In or about March 2003, Respondent made a modification to Unit B-4 by improving the cooler and quench, replacing the primary bag filter, changing and insulating two air preheaters, and installing a new castable head and air inlet plenum. In addition, Respondent also made a modification to Unit B-2, by replacing and extending the header system, installing a higher pressure and higher volume dryer vent fan system, and replacing an air preheater. Taken together, these physical changes, part of the “Borger Growth Plan of 2003” resulted in increased capacity plantwide.

63. This modification triggered a “significant” increase in SO₂ emissions as defined in 40 C.F.R. § 52.21(b)(23) and 30 TAC § 116.160(a), and therefore is considered a “major modification” as defined in 40 C.F.R. § 52.21(b)(2)(i).
64. In failing to apply for and obtain authority, via necessary construction permits, prior to modifying Unit B-4 and Unit B-2 at the Facility in 2003, Respondent violated and continues to be in violation of federal and state requirements for preconstruction permits under applicable PSD regulations, specifically those provided under 40 C.F.R. § 52.21(j)-(r), 40 C.F.R. § 52.21(i)(1), and 30 TAC § 116.110(a).
65. In failing to apply BACT to the major modification made at Unit B-4 and Unit B-2 at the Facility in 2003, and commencing operations each day thereafter without applying necessary technologies under BACT, Respondent continues to accrue violations of applicable federal and state PSD requirements for major modifications, specifically those provided under 40 C.F.R. § 52.21(j)(3) and 30 TAC § 116.111(2)(C).
66. In reinitiating and continuing to operate the Facility without obtaining or applying for the required permit to operate following completion of the major modification to Unit B-4 and Unit B-2 in 2003, Respondent continues to accrue violations of applicable federal and state PSD regulations.

(4) Failure to Obtain PSD Permit Prior to Making a Major Modification to Unit B-2 in or about October 2006 (NO_x, SO₂, and CO Emissions Increases)

67. In or about October 2006, Respondent made a modification to Unit B-2 by replacing an air preheater. The modification resulted in increased capacity at the unit.
68. The modification triggered “significant” net emissions increases in NO_x, SO₂, and CO emissions as defined in 40 C.F.R. § 52.21(b)(23) and 30 TAC § 116.160(a), and therefore is considered a “major modification” as defined in 40 C.F.R. § 52.21(b)(2)(i).
69. In failing to apply for and obtain authority, via necessary construction permits, prior to modifying Unit B-2 at the Facility in or about October 2006, Respondent violated and continues to be in violation of federal and state requirements for preconstruction permits under applicable PSD regulations, specifically those provided under 40 C.F.R. § 52.21(j)-(r), 40 C.F.R. § 52.21(i)(1) and 30 TAC § 116.110(a).

70. In failing to apply BACT to the major modification made to Unit B-2 at the Facility in or about October 2006, and commencing operations each day thereafter without applying necessary technologies under BACT, Respondent continues to accrue violations of applicable federal and state PSD requirements for major modifications, specifically those provided under 40 C.F.R. § 52.21(j)(3) and 30 TAC § 116.111(2)(C).
71. In reinitiating and continuing to operate the Facility in or about October 2006, without obtaining or applying for the required permit to operate following completion of the major modification to Unit B-2, Respondent continues to accrue violations of applicable federal and state PSD regulations.

(5) Failure to Obtain PSD Permit Prior to Making a Major Modification to Unit B-1 in or about March 2007 (NO_x, SO₂, and CO Emissions Increases)

72. In or about March 2007, Respondent made a modification to Unit B-1 by replacing an air preheater. The modification resulted in increased capacity at the unit.
73. The modification triggered a “significant” net emissions increase in NO_x, SO₂, and CO emissions as defined in 40 C.F.R. § 52.21(b)(23) and 30 TAC § 116.160(a), and therefore is considered a “major modification” as defined in 40 C.F.R. § 52.21(b)(2)(i).
74. In failing to apply and obtain authority, via necessary construction permits, prior to modifying Unit B-1 at the Facility in or about March 2007, Respondent continues to be in violation of federal and state requirements for preconstruction permits under applicable PSD regulations, specifically those provided under 40 C.F.R. § 52.21(j)-(r), 40 C.F.R. § 52.21(i)(1) and 30 TAC § 116.110(a).
75. In failing to apply BACT to the major modification made to Unit B-1 at the Facility in or about March 2007, and commencing operations each day thereafter without applying necessary technologies under BACT, Respondent continues to accrue violations of applicable federal and state PSD requirements for major modifications, specifically those provided under 40 C.F.R. § 52.21(j)(3) and 30 TAC § 116.111(2)(C).
76. In reinitiating and continuing to operate the Facility in or about March 2007, without obtaining or applying for the required permit to operate following completion of the major modification to Unit B-1, Respondent continues to accrue violations of applicable federal and state PSD regulations.

(6) Failure to Obtain PSD Permit Prior to Making a Major Modification to Unit B-4 in or about August 2008 (NO_x, SO₂, and CO Emissions Increases)

77. In or about August 2008, Respondent made a modification to Unit B-4 by replacing an air plenum and reactor head with those of a different design. The modification resulted in increased capacity at the unit.
78. The modification triggered “significant” new emissions increases in NO_x, SO₂, and CO emissions as defined in 40 C.F.R. § 52.21(b)(23) 30 TAC § 116.160, and therefore is considered a “major modification” as defined in 40 C.F.R. § 52.21(b)(2)(i).
79. In failing to apply and obtain authority, via necessary construction permits, prior to modifying Unit B-4 at the Facility in or about August 2008, Respondent violated and continues to be in violation of federal and state requirements for preconstruction permits under applicable PSD regulations, specifically those provided under 40 C.F.R. § 52.21(j)-(r), 40 C.F.R. § 52.21(i)(1) and 30 TAC § 116.110(a).
80. In failing to apply BACT to the major modification made to Unit B-4 at the Facility in or about August 2008, and commencing operations each day thereafter without applying necessary technologies under BACT, Respondent continues to accrue violations of applicable federal and state PSD requirements for major modifications, specifically those provided under 40 C.F.R. §52.21(j)(3) and 30 TAC § 116.111(2)(C).
81. In reinitiating and continuing to operate the Facility in or about August 2008, without obtaining or applying for the required permit to operate following completion of major modification to Unit B-4, Respondent continues to accrue violations of applicable federal and state PSD regulations.

(7) Failure to Include BACT in the Title V Permit

82. On February 24, 2003, Respondent obtained Federal Operating Permit No. O-1661. The Title V permit was deficient, as it did not include BACT requirements for projects that should have gone through PSD review for the following pollutants: SO₂ and CO.
83. A renewal for Permit No. O-1661 was issued on February 22, 2008. That Title V permit was deficient, as it did not include BACT requirements for projects that should have gone through PSD review for the following pollutants: NO_x, SO₂ and CO.

84. Accordingly, the Title V permit issued on February 24, 2003, and renewed on August 31, 2010, did not include emissions limitations for NO_x, SO₂, and CO that assure compliance with the PSD requirements of the Act and the Texas SIP.
85. In failing to assure compliance with all applicable emissions limitations, specifically those requiring that it incorporate BACT for NO_x, SO₂, and CO into its permit applications and subsequent permits, Respondent violated and continues to violate section 502(a) and 504(a) of the Act, 42 U.S.C. sections 7761a(a), and 7761c(a), as well as 40 C.F.R. sections 70.5 and 70.6(a) and the Texas Title V Operating Permit regulations at 30 TAC Chapter 122.

D. ENFORCEMENT

Sections 113(a)(1) and (3) of the Act, 42 U.S.C. § 7413(a)(1) and (3), provide that the Administrator may bring a civil action in accordance with Section 113(b) of the Act, 42 U.S.C. § 7413(b), whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of, inter alia, the PSD requirements of Section 165(a) of the Act, 42 U.S.C. § 7475(a); Title V of the Act, 42 U.S.C. §§ 7661-7661f, or any rule or permit issued thereunder; or the PSD provisions of the Texas SIP. *See also* 40 C.F.R. § 52.23.

Section 113(b) of the Act, 42 U.S.C. § 7413(b), authorizes the Administrator to initiate a judicial enforcement action for a permanent or temporary injunction, and/or for a civil penalty of up to \$25,000 per day for each violation occurring on or before January 30, 1997; up to \$27,500 per day for each such violation occurring on or after January 31, 1997 and up to and including March 15, 2004; up to \$32,500 per day for each such violation occurring on or after March 16, 2004 through January 12, 2009; and up to \$37,500 per day for each such violation occurring on or after January 13, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, 40 C.F.R. § 19.4, and 74 Fed. Reg. 626 (Jan. 7, 2009) against any person whenever such person has violated, or is in violation of, inter alia, the requirements or prohibitions described in the preceding paragraph.

Section 167 of the Act, 42 U.S.C. § 7477, authorizes the Administrator to initiate an action for injunctive relief, as necessary to prevent the construction, modification or operation of a major emitting facility which does not conform to the PSD requirements in Part C of the Act.

E. OPPORTUNITY FOR CONFERENCE

Orion may, upon request, confer with EPA. The conference will enable Orion to present evidence bearing on the finding of violations, on the nature of the violations, and on any efforts it may have taken or proposes to take to achieve compliance. Orion has a right to be represented by counsel. A request for a conference must be made within ten (10) days of receipt of this Notice, and the request for a conference or other inquiries concerning the Notice should be made in writing to:

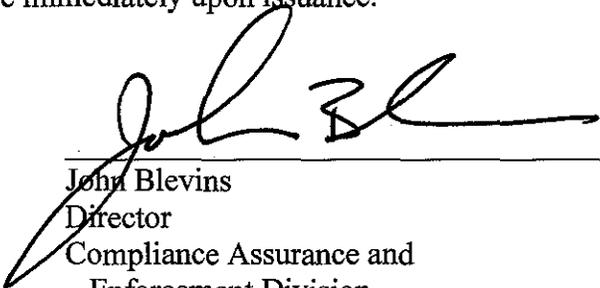
Jan Gerro (6RC-EA)
Assistant Regional Counsel
Air Enforcement Branch
Office of Regional Counsel, Region 6
U.S. Environmental Protection Agency
1445 Ross Avenue
Dallas, Texas 75202-2733

If you have any questions, please feel free to call Ms. Gerro at (214) 665-2121.

F. EFFECTIVE DATE

This NOV shall become effective immediately upon issuance.

Dated: 1.11.13.



John Blevins
Director
Compliance Assurance and
Enforcement Division