**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

October 10, 2012

CERTIFIED MAIL – RETURN RECEIPT REQUESTED: 7010 1060 0002 1872 6643

Mr. Damon Denson
Plant Manager
Orion Engineered Carbons, LLC
P.O. Box 9320
New Iberia, LA 70562-9320

Subject: Notice and Finding of Violation
Orion Engineered Carbons Ivanhoe Carbon Black Plant
Franklin, St. Mary Parish, Louisiana

Dear Mr. Denson:

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 Louisiana State Implementation Plan at its Franklin, Louisiana, 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

Celena Cage, Administrator
Enforcement Division
Louisiana Department of Environmental Quality

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

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| IN THE MATTER OF: | ) | |
| | ) | |
| ORION ENGINEERED CARBONS, LLC | ) | NOTICE OF VIOLATION |
| | ) | |
| | ) | |
| 7095 HIGHWAY 83 S | ) | |
| FRANKLIN, LOUISIANA 70538 | ) | |

## 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 Franklin, St. Mary Parish, Louisiana. Specifically, Orion has violated the Prevention of Significant Deterioration (PSD) and the New Source Review (NSR) permitting requirements of the Louisiana State Implementation Plan (SIP) and the Federal Title V requirements of the Act at its Franklin, Louisiana facility.

This Notice is issued pursuant to Section 113(a) of the CAA, 42 U.S.C. § 7413(a). 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 sulfur dioxide ($SO_2$), carbon monoxide (CO), nitrogen oxides ($NO_x$), ozone , and particulate matter less than 10 micrometers ($PM_{10}$) 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.

5. 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.

6. At all times relevant to this Notice, St. Mary Parish, the area in which the Facility is located, has been classified as either attainment or unclassifiable for all criteria pollutants.

Prevention of Significant Deterioration Regulations

7. Part C of Title I of the Act, 42 U.S.C. §§ 7470-7492, sets forth requirements for the prevention of significant deterioration of air quality in those areas designated as either attainment or unclassifiable for purposes of meeting the NAAQS standards. These requirements are designed to protect public health and welfare, to assure that economic growth will occur in a manner consistent with the preservation of existing clean air resources, and to assure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of such a decision and after public participation in the decision making process. 42 U.S.C. § 7470. These provisions are referred to herein as the "PSD program."

8. Section 165(a) of the Act, 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 unless a permit has been issued that comports with the requirements of Section 165 and the facility employs the best available control technology (BACT) for each pollutant subject to regulation under the Act that is emitted from the facility.

9. Section 169(1) of the Act, 42 U.S.C. § 7479(1), designates carbon black plants (furnace process) which emit or have the potential to emit one hundred tons per year or more of any pollutant to be "major emitting facilities." *See also,* Louisiana Administrative Code (LAC) 33:III.509.

10. 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."

11. 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.

12. 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).

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. EPA approved the State of Louisiana PSD Program in the federally enforceable SIP effective May 26, 1987. 40 C.F.R. § 52.970 and 52 Fed. Reg. 13671 (April 24, 1987).

15. Louisiana's PSD program is located in LAC 33:III.509. These rules mirror the federal PSD regulations codified in 40 C.F.R. § 52.21.

16. The regulations appearing at LAC 33:III.509 were incorporated into and a part of the Louisiana SIP at the time of the major modifications at issue in this case. All citations to the PSD regulations herein refer to the provisions of the Louisiana SIP incorporated into and part of the Louisiana SIP as applicable at the time of the major modifications alleged herein.

17. The PSD regulations set forth in LAC 33:III.509 apply to a new "major stationary source" that intends to construct a "major modification" in an attainment or unclassifiable area. LAC 33:III.509.B.

18. Under the PSD regulations, "major stationary source" is defined to include carbon black facilities which emit or have the potential to emit one hundred tons per year or more of any regulated air pollutant. LAC 33:III.509.B.

19. Under the PSD regulations, "major modification" is defined in LAC 33:III.509.B as any physical change or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the CAA.

20. Under the PSD regulations, "net emissions increase" means the amount by which the sum of the following exceeds zero: "the increase in 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 major stationary source that are contemporaneous with the particular change and are otherwise creditable." LAC 33:III.509.B.

21. Under the PSD regulations, a "significant" net emissions increase means an increase in the rate of emissions that would equal or exceed any of the following rates for the following pollutants: 100 tons per year of CO, 40 tons per year of $NO_x$, 40 tons per year of $SO_2$, 40 tons per year of volatile organic compounds (VOC), 15 tons per year of $PM_{10}$, 10 tons per year of hydrogen sulfide ($H_2S$), and 10 tons per year of total reduced sulfur (TRS). LAC 33:III.509.B.

22. 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. LAC 33:III.509.B. 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. LAC 33:III.509.B.

23. Under the PSD regulations, "construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in actual emissions. LAC 33:III.509.B; *See also,* 42 U.S.C. § 7479(2)(c). "Construction" includes the "modification" (as defined in Section 111(a) of the Act, 42 U.S.C. § 7411(a)) of any source or facility.

24. 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 LAC 33:III.509.

25. A major stationary source subject to the requirements of LAC 33:III.509 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. LAC 33:III.509.J-Q.

26. No person shall cause or allow the construction or modification of any source without first obtaining an authority to construct or modify as to comply with all applicable air pollution rules and regulations. *See,* LAC 33:III.509.A.3.

Federal Title V Requirements

27. 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 July1, 1996. *See,* 61 Fed. Reg. 34228; 40 C.F.R. Part 71.

28. 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.

29. 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. 42 U.S.C. § 7661c(a).

30. 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,* LAC 33:III.507.A.1.

31. 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,* LAC 33:III.507.A.

32. 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,* LAC 33:III.507.B.

33. 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,* LAC 33:III.507.C. 1 and LAC 33:III.17.A (requiring the timely submission of permit applications for existing sources).

34. 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,* LAC 33:III.517.B.1.

Louisiana's Title V Requirements

35. EPA granted full approval of the Louisiana Title V permitting program on October 12, 1995. *See also*, 60 Fed. Reg. 47296 (September 12, 1995).

36. The Louisiana regulations governing the Title V permitting program are codified at LAC 33:III.507, and are federally enforceable pursuant to Section 113(a)(3).

37. LAC 33:III.507.C.1 states that no Part 70 source may operate after the time that it is required to file a timely application with the Louisiana Department of Environmental Quality (LDEQ), except in compliance with an LDEQ-issued permit.

38. LAC 33:III.517.A requires sources to submit timely and complete permit applications for Title V permits with required information and LAC 33:III.507.A specifies required permit content.

39. LAC 33:III.507.E provides that applications for Title V permit renewal shall be subject to the same procedural requirements, including those for public participation, affected State comment, and EPA review, that apply to initial permit issuance.

40. LAC 33:III.507.C requires sources to submit additional information to LDEQ to supplement or correct an application promptly after becoming aware of the need for additional or corrected information.

## B. FACTUAL BACKGROUND

41. Orion owns and operates a carbon black manufacturing facility in Franklin, St. Mary Parish, Louisiana (Facility). Orion is hereinafter referred to as "Respondent."

42. 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).

43. At the Facility, Respondent operates four units (Units Nos. 2, 3, 4, and 5) that manufacture tread grade and carcass carbon black for the tire industry.

44. 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: of $NO_x$, $SO_2$, $PM_{10}$, VOC, CO, $H_2S$, and TRS.

45. St. Mary Parish is designated as either attainment or unclassifiable for all criteria pollutants. *See,* 40 C.F.R. § 81.319.

46. The Facility currently operates under a Title V Permit (Number: 2660-00013-V0) that was issued by LDEQ on December 9, 2004, amended on September 29, 2005, modified on June 8, 2006 (Number: 2660-00013-V1), amended on May 13, 2008, and renewed on May 21, 2010 (Number: 2660-00013-V2).

47. EPA sent Respondent an Information Request pursuant to Section 114 of the CAA, 42 U.S.C. § 7414. By Information Request 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 August 3, 2011, EPA also required Respondent to submit specific information regarding its carbon black manufacturing facilities.

48. The Company provided responses to EPA's Information Requests on February 3, 2011, February 18, 2011, and September 1, 2011.

## C. VIOLATIONS

49. Upon review of the information provided by Respondent, referenced above in Paragraph 48, 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.

50. Furthermore, the projects referenced in Paragraphs 51 through 70 also meet the definition of "major modification" provided under both 40 C.F.R. § 52.21(b)(2)(i) and LAC 33:III.509.B, because they represent: a physical change in, or a change in the method of operation of, a major stationary source that resulted in a significant emissions increases of a regulated NSR pollutant(s) (specifically $NO_x$, $SO_2$, CO, VOC, and $PM_{10}$), and significant net emissions increases of those pollutants from a major stationary source.

**(1) Failure to Obtain PSD Permit Prior to Making Major Modifications to Units 4 and 5 in or about November 1997 ($NO_x$ and $SO_2$ Emissions Increases)**

51. LAC 33:III.509 of the Louisiana SIP incorporates relevant provisions of 40 C.F.R. §52.21 (*See* 40 C.F.R. §52.970(c)(69) EPA approval of the Louisiana revisions to the relevant section of the Louisiana SIP).

52. In or about November 1997, Respondent made several modifications to Units 4 and 5, including but not limited to, replacement of existing process air blowers and modifications to the dryer exhaust stack. The modifications resulted in increased production at the unit.

53. These modifications triggered "significant" net emissions increases in $NO_x$ and $SO_2$ emissions as defined in 40 C.F.R. § 52.21(b)(23), and LAC 33:III.509.B.

54. In failing to apply for and obtain authority, via necessary construction permits, prior to modifying Units 4 and 5 at the Facility in or about November 1997, Respondent violated and continues to be in violation of LAC 33:III.509.I.1 of the Louisiana SIP and the federal requirements for preconstruction permits under applicable PSD regulations, specifically those provided under 40 C.F.R. § 52.21(i)(1) and 40 C.F.R. § 52.21(j) – (r).

55. In failing to apply BACT to the major modifications made to Units 4 and 5 at the Facility in or about November 1997, 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 LAC 33:III.509.J.3.

56. In reinitiating (restart of facility processes after major modification) and continuing to operate the Facility without obtaining or applying for the required permit to operate following completion of the major modifications to Units 4 and 5, as referenced in Paragraph 52 above, 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 3 in or about October 2000 ($NO_x$, $SO_2$, CO and VOC Emissions Increases)**

57. LAC 33:III.509 of the Louisiana SIP incorporates relevant provisions of 40 C.F.R. § 52.21 (*See* 40 C.F.R. §52.970(c)(69) EPA approval of the Louisiana revisions to the relevant section of the Louisiana SIP).

58. In or about October 2000, Respondent modified Unit 3 by replacing the existing primary bag filter. The modification resulted in increased production at the unit.

59. This modification triggered "significant" net emissions increases in $NO_x$, $SO_2$, CO and VOC emissions as defined in 40 C.F.R. § 52.21(b)(23), and LAC 33:III.509.B.

60. In failing to apply for and obtain authority, via necessary construction permits, prior to modifying Unit 3 at the Facility in or about October 2000, Respondent violated and continues to be in violation of LAC 33:III.509.I.1 of the Louisiana SIP and federal requirements for preconstruction permits under applicable PSD regulations, specifically those provided under 40 C.F.R. § 52.21(i)(1) and 40 C.F.R. § 52.21(j) – (r).

61. In failing to apply BACT to the major modification made to Unit 3 at the Facility in or about October 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, specifically those provided under 40 C.F.R. § 52.21(j)(3), and under LAC 33:III.509.J.3.

62. 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 3 as referenced in Paragraph 58 above, Respondent continues to accrue violations of applicable federal and state PSD regulations.

**(3) Failure to Obtain PSD Permit Prior to Making a Major Modification to Unit 2 in or about November 2004 and Subsequent Modification to the same Unit in or about July 2008 ($NO_x$, $SO_2$, CO, $PM_{10}$, and VOC Emissions Increases)**

63. LAC 33:III.509 of the Louisiana SIP incorporates relevant provisions of 40 C.F.R. §52.21 (*See* 40 C.F.R. §52.970(c)(69) EPA approval of the Louisiana revisions to the relevant section of the Louisiana SIP).

64. In or about November 2004, Respondent made several modifications to Unit 2, including but not limited to, replacing the existing air preheater and associated equipment and installing a new blower. In or about July 2008, Respondent modified the air preheater that was installed in 2004. The modifications resulted in increased production at the unit.

65. These modifications triggered "significant" net emissions increases in $NO_x$, $SO_2$, CO, $PM_{10}$, and VOC emissions as defined in 40 C.F.R. § 52.21(b)(23), and LAC 33:III.509.B.

66. In failing to apply for and obtain authority, via necessary construction permits, prior to modifying Unit 2 at the Facility in or about November 2004, Respondent violated and continues to be in violation of LAC 33:III.509.I.1 of the Louisiana SIP and the federal requirements for preconstruction permits under applicable PSD regulations, specifically those provided under 40 C.F.R. § 52.21(i)(1) and 40 C.F.R. § 52.21(j) – (r).

67. In failing to apply BACT to the major modifications made to Unit 2 at the Facility in or about November 2004, 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 under LAC 33:III.509.J.3.

68. In reinitiating and continuing to operate the Facility without obtaining or applying for the required permit to operate following completion of major modifications to Unit 2 as referenced in Paragraph 64 above, 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 4 in or about November 2009 ($NO_x$ and $SO_2$ Emissions Increases)**

69. LAC 33:III.509 of the Louisiana SIP incorporates relevant provisions of 40 C.F.R. §52.21 (*See* 40 C.F.R. §52.970(c)(69) EPA approval of the Louisiana revisions to the relevant section of the Louisiana SIP).

70. In or about November 2009, Respondent modified Unit 4 by upgrading the primary bag filter. The modifications resulted in increased production at the unit.

71. This modification triggered "significant" net emissions increases in $NO_x$ and $SO_2$ emissions as defined in 40 C.F.R. § 52.21(b)(23), and LAC 33:III.509.B.

72. In failing to apply for and obtain authority, via necessary construction permits, prior to modifying Unit 4 at the Facility in or about November 2009, Respondent violates and continues to be in violation of LAC 33:III.509.I.1 of the Louisiana SIP and the federal requirements for preconstruction permits under applicable PSD regulations, specifically those provided under 40 C.F.R. § 52.21(i)(1) and 40 C.F.R. § 52.21(j) – (r).

73. In failing to apply BACT to the major modifications made to Unit 4 at the Facility in or about November 2009, 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 under LAC 33:III.509.J.3.

74. In reinitiating and continuing to operate the Facility without obtaining or applying for the required permit to operate following completion of major modifications to Unit 4 as referenced in Paragraph 70 above, 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 3 in or about October 2010 ($NO_x$ and $SO_2$ Emissions Increases)**

75. LAC 33:III.509 of the Louisiana SIP incorporates relevant provisions of 40 C.F.R. §52.21 (*See* 40 C.F.R. §52.970(c)(69) EPA approval of the Louisiana revisions to the relevant section of the Louisiana SIP).

76. In or about October 2010, Respondent modified Unit 3 by replacing the air preheater. This modification resulted in increased production at the unit.

77. This modification triggered "significant" net emissions increases in $NO_x$ and $SO_2$ emissions as defined in 40 C.F.R. §52.21(b)(23) and LAC 33:III.509.B.

78. In failing to apply for or obtain authority, via necessary construction permit, prior to modifying Unit 3 at the Facility in or about October 2010, Respondent violated and continues to be in violation of LAC 33:III.509.I.1 of the Louisiana SIP and the federal requirements for preconstruction permits under applicable PSD regulations, specifically those provided under 40 C.F.R. §52.21(a)(2)(iii) and 40 C.F.R. § 52.21(j) – (r).

79. In failing to apply BACT to the major modification made to Unit 3 at the Facility in or about October 2010, 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 under LAC 33:III.509.J.3.

80. In reinitiating and continuing to operate the Facility without obtaining or applying for the required permit to operate following completion of major modifications to Unit 4 as referenced in Paragraph 76 above, Respondent continues to accrue violations of applicable federal and state PSD regulations.

**(6) Failure to Include BACT in the Title V Permit**

81. On December 9, 2004, Respondent obtained Federal Operating Permit No. 2660-00013-V0. 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: $NO_x$, $SO_2$, CO and VOC.

82. On June 8, 2006, a modification for Permit No. 2660-00013-VI was issued. 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: $NO_x$, $SO_2$, CO, $PM_{10}$ and VOC.

83. A renewal for Permit No. 2660-00013-V2 was issued on May 21, 2010. 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: $NO_x$, and $SO_2$.

84. Accordingly, the Title V permit issued on December 9, 2004, modified on June 8, 2006, and renewed on May 21, 2010, did not include emissions limitations for $NO_x$, $SO_2$, CO, $PM_{10}$ and VOC that assure compliance with the PSD requirements of the Act and the Louisiana SIP.

85. In failing to assure compliance with all applicable emission limitations, specifically those requiring that it incorporate BACT for $NO_x$, $SO_2$, CO, $PM_{10}$ and VOC 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. §§ 7761a(a) and 7761c(a), as well as 40 C.F.R. §§ 70.5 and 70.6(a).

## 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 Louisiana 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, Charlie Garlow, Attorney-Advisor, at (202) 564-1088, or Kellie Ortega, Attorney-Advisor, at (202) 564-5529.

## F. EFFECTIVE DATE

This NOV shall become effective immediately upon issuance.

Dated: 10·10·12

John Blevins
Director
Compliance Assurance and
Enforcement Division