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

September 18, 2012

BY OVERNIGHT MAIL

Mr. Jesse P. Niedermann, P.E.
Plant Manager
Sid Richardson Carbon and Energy Company
9455 FM 1559
Borger, TX 79007

Re: Notice of Violation, Sid Richardson Carbon and Energy Company, Borger, Texas

Dear Mr. Niedermann:

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 Sid Richardson Carbon and Energy Company for violations of the Prevention of Significant Deterioration, Title V, and National Emission Standards for Hazardous Air Pollutants requirements under the CAA and the Texas State Implementation Plan at its Borger, Texas, facility. In accordance with the Confidential Business Information (CBI) regulations, we have not included any CBI in the Notice.

Please note the opportunity to confer as outlined in the Notice. Any request to confer should be directed to Lorraine Dixon, Senior Enforcement Counsel. Ms. Dixon can be reached at (214) 665-7589.

Sincerely,

John Blevins
Director
Compliance Assurance and
Enforcement Division

Enclosure

Re: Notice of Violation
Sid Richardson Carbon and Energy Company, Borger, Texas

cc: Long B. Nguyen, P.E.
Sid Richardson Carbon and Energy Company

Brenda Clayton
Kelly Hart

Michael DeLaCruz, Manager, Air Enforcement
Texas Commission on Environmental Quality

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

Charlie Garlow
Air Enforcement Branch
U.S. Environmental Protection Agency, HQ

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:	)	
	)	
SID RICHARDSON CARBON AND ENERGY COMPANY	)	NOTICE OF VIOLATION
	)	
	)	
	)	
201 MAIN STREET	)	
BORGER, TEXAS 76102	)	

NOTICE AND FINDING OF VIOLATION

This Notice and Finding of Violation (Notice) is issued to Sid Richardson Carbon and Energy Company (SRCC) 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 at 9455 FM 1559 Road in the city of Borger, Hutchinson County, Texas. Specifically, SRCC 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 (Facility). SRCC has also violated specific conditions of PSD Permit No. 1867A/PSD-TX-1032 at the Borger facility, as well as requirements of 40 Code of Federal Regulations (C.F.R.) Part 63, National Emission Standards for Hazardous Air Pollutants (NESHAP) Subpart YY – Generic Maximum Achievable Control Technology (MACT) for carbon black manufacturing.

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 in this Notice 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 carbon monoxide (CO), nitrogen oxides (NO_x), sulfur dioxide (SO_2), and particulate matter less than 10 micrometers (PM_{10}) as criteria pollutants, and has promulgated NAAQS for such pollutants.

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 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.

13. 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.

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 § 160.111; *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."

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. *See* 40 C.F.R. § 52.21(b)(1)(i)(a); *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. " *See* 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:"

Pollutant	Rate (tons per year)
Nitrogen oxides (NO_x)	40
Sulfur dioxide (SO_2)	40
Carbon monoxide (CO)	100
Volatile organic compounds (VOC)	40
Hydrogen sulfide (H_2S)	10
Total reduced sulfur (TRS) (including H_2S)	10
Particulate Matter – 10	15

See 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." *See* 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. *See* 30 TAC § 116.160.

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."

National Emission Standards for Hazardous Air Pollutants for Source Categories

39. Part 63 of Subchapter C (Air Programs), establishes the regulations and requirements for the National Emission Standards for Hazardous Air Pollutants (NESHAPs) for Source Categories. This part contains national emission standards for hazardous air pollutants established pursuant to Section 112 of the Act as amended November 15, 1990. These standards regulate specific categories of stationary sources that emit (or have the potential to emit) one or more hazardous air pollutants listed in this part

pursuant to Section 112(b) of the Act. 40 C.F.R. Section 63.1 explains the applicability of such standards to sources affected by them. Terms used in this part are defined in the Act or in 40 C.F.R. Section 63.2.

40. 40 C.F.R. § 63.7 contains Performance testing requirements for affected sources. The applicability of this Section is set out in 40 C.F.R. § 63.1(a)(4). Except as provided in 63.1 of this Section, if required to do performance testing by a relevant standard, and unless a waiver of performance testing is obtained under this Section or the conditions of paragraph 40 C.F.R. § 63.7(c)(3)(ii)(B) of this Section apply, the owner or operator of the affected source must perform such tests within 180 days of the compliance date for each source.

41. 40 C.F.R. § 63.9 contains Notification requirements for affected sources. The applicability of this Section is set out in 40 C.F.R. § 63.1(a)(4). Requirements for initial notifications are contained in 40 C.F.R. § 63.9(b). Requirements for notification of performance testing are contained in 40 C.F.R. § 63.9(e). Requirements for notification of compliance status are contained in 40 C.F.R. § 63.9(h).

42. The provisions of Subpart SS of 40 C.F.R. § 63 include requirements for closed vent systems, control devices and routing of air emissions to a fuel gas system or processes. According to 40 C.F.R. § 63.980, these provisions apply when another subpart references the use of this subpart for such air emission control. General compliance requirements for process vents and equipment leaks are contained in 40 C.F.R. § 63.982 (a)(2), (b), and (c). Closed vent system equipment and operating requirements are contained in 40 C.F.R. § 63.983(a). Closed vent system inspection and monitoring requirements are contained in 40 C.F.R. § 63.983(b). Closed vent system inspection procedures are contained in 40 C.F.R. § 63.983(c). Closed vent system leak repair provisions are contained in 40 C.F.R. § 63.983(d). Flare equipment and operating requirements are contained in 40 C.F.R. § 63.987(a). Flare compliance assessment is contained in 40 C.F.R. § 63.987(b) and 40 C.F.R.§ 63.997 (a) through (e). Flare monitoring requirements are contained in 40 C.F.R. § 63.987(c). Performance test and flare compliance assessment notifications are contained in 40 C.F.R. § 63.999.

43. The provisions of Subpart YY of 40 C.F.R. § 63 applies to source categories and affected sources specified in 40 C.F.R. § 63.1103(a) through (h). The affected emissions points, by source category, are summarized in table 1 to 40 C.F.R. § 63.1100(A) – Source Category MACT Applicability. The source category-specific applicability, definitions, and requirements for carbon black production are contained in 40 C.F.R. § 63.1103(f). Calculation and measurement methods for criteria that are required by 40 C.F.R. § 63.1103(f) to be used to determine applicability of the control requirements for process vents from continuous operations is contained in 40 C.F.R. § 63.1104. Reporting Requirements for affected facilities are contained in 40 C.F.R. §§ 63.1110 and 63.9(b)(4)(v).

B. FACTUAL BACKGROUND

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

45. SRCC is a privately owned company. SRCC is hereinafter referred to as "Respondent."

46. 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).

47. At the Facility, Respondent operates four carbon black units (Unit Numbers 1-4). 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 product is then dried, pelletized, and packaged.

48. 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.

49. Hutchinson County is designated as either attainment or unclassifiable for all criteria pollutants. *See* 40 C.F.R. § 81.3144.

50. The Facility currently operates under a Title V Permit (Permit Number: O-1414) that was issued by the Texas Commission on Environmental Quality on September 19, 2003, modified on July 27, 2004; December 22, 2004; and May 16, 2006, and renewed on December 8, 2008.

51. By information request letter issued pursuant to the authority of Section 114 of the Act, 42 U.S.C. § 7414, dated August 19, 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 June 16-17, 2009, EPA required Respondent to submit specific information regarding its carbon black manufacturing facilities.

52. Respondent replied to EPA's Section 114 information requests to the Facility with submittals on August 17, 2009 and January 24, 2011.

C. VIOLATIONS

53. Upon review of the information provided by Respondent, referenced above in Paragraph 54, 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.

54. Furthermore, the projects referenced below in Paragraphs 60 through 104 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 a significant emissions increases of a regulated NSR pollutant(s) (specifically NO_x, SO_2, CO, TRS, H_2S, and PM_{10}) and significant net emissions increases of those pollutants from a major stationary source.

55. Since September 2003, SRCC has failed to submit a timely, accurate, and complete Title V permit application for its Facility with information pertaining to the modifications identified in Paragraphs 60 through 98 and 118 through 121, and with information concerning all applicable requirements, including, but not limited to, the requirement to apply, install, and operate BACT for NO_x, SO_2, CO, TRS, H_2S, and PM_{10} emissions at the Facility and 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. § 70, including, but not limited to, 40 C.F.R. §§ 70.1(b), 70.5, 70.6, and 70.7(b); and the Texas Title V provisions at 30 TAC § 122.121.

56. The activities described in Paragraphs 99 through 117 are violations under Special Condition #6 of Permit No. 1867A/PSD-TX-1032 and NESHAPs.

The EPA alleges that the following activities constitute violations of the CAA's PSD, Title V, NESHAP, and permitting requirements.

(1) Failure to Obtain PSD Permit Prior to Making Major Modifications to the Facility in or about March 2001 (CO, PM_{10}, NO_x , SO_2 and TRS Emissions Increases)

57. In or about March 2001, Respondent commenced construction to existing dryers at the Facility. The modifications resulted in increased production at the Facility.

58. These modifications triggered "significant" increases in CO, PM_{10}, NO_x, SO_2 and TRS emissions as defined in 40 C.F.R. § 52.21 (b)(23) (1994), and 30 TAC § 116.160(a) (1996).

59. In failing to apply for or obtain authority, via the necessary permits, prior to modifying the Facility in or about March 2001, 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) through (r) and 40 C.F.R. § 52.21(i)(l) (1994), and 30 TAC § 116.1 (1993).

60. In failing to apply BACT to the major modifications made to the Facility in or about March 2001, 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) (1994), and TAC § 116.3(a)(3) (1993).

61. In reinitiating, and continuing to operate the Facility in or about March 2001, without obtaining or applying for the required permit to operate following completion of major modifications to the Facility since March 2001, Respondent continues to accrue violations of applicable federal and state PSD regulations and TAC § 116.160(a)(1996).

(2) Failure to Obtain PSD Permit Prior to Making a Major Modification to Unit No. 3 in or about April 2001 (SO_2 Emissions Increases)

62. In or about April 2001, Respondent modified Unit No. 3 primary bag filter and related equipment. The modifications resulted in increased production at the unit.

63. The modification triggered "significant" increases in SO_2 emissions as defined in 40 C.F.R. § 52.21(b)(23) (1994), and 30 TAC § 116.160 (1996).

64. In failing to apply for or obtain authority, via the necessary permits, prior to modifying Unit No. 3 at the Facility in or about April 2001, 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) through (r) and 40 C.F.R. § 52.21(i)(1) (1994), and 30 TAC § 116.1(a) (1993).

65. In failing to apply BACT to the major modification made to Unit No. 3, at the facility in or about April 2001, 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) (1994), and 30 TAC § 116.3(a)(3) (1993).

66. In reinitiating, and continuing to operate the Facility in or about April 2001, without obtaining or applying for the required permit to operate following completion of the major modification to Unit No. 3 since April 2001, Respondent continues to accrue violations of applicable federal and state PSD regulations and 30 TAC § 116.160(a) (1996).

(3) Failure to Obtain PSD Permit Prior to Making Major Modifications to Unit Nos. 1 and 2 in or about July 2001 (SO_2 Emissions Increase)

67. In or about July 2001, Respondent made several modifications at Units No. 1 and No. 2, including, but not limited to, the installation of a blower and related equipment. The modifications resulted in increased production at the units.

68. These modifications triggered "significant" increases in SO_2 emissions as defined in 40 C.F.R. § 52.21(b)(23) (1994), and 30 TAC § 116.160(a) (1996).

69. In failing to apply for or obtain authority, via the necessary permits, prior to modifying Units No. 1 and No. 2 at the Facility in or about July 2001, 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) through (r) and 40 C.F.R. § 52.21(i)(1) (1994), and 30 TAC § 116.1 (a) (1993).

70. In failing to apply BACT to the major modifications made at Units No. 1 and No. 2 at the Facility in or about July 2001, 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) (1994), and 30 TAC § 116.3(a)(3) (1993).

71. In reinitiating, and continuing to operate the Facility in or about July 2001, without obtaining or applying for the required permit to operate following completion of the major modifications to Units No. 1 and No. 2 since July 2001, Respondent continues to accrue violations of applicable federal and state PSD regulations and 30 TAC § 116.160(a) (1996).

(4) Failure to Obtain PSD Permit Prior to Making a Major Modification to Unit No. 2 between November 2002 and February 2003 (CO, PM_{10}, NO_x , SO_2 and TRS Emissions Increases)

72. In or about November 2002 through February 2013, Respondent modified Unit No. 2 by installing an air preheater and related equipment. The modifications resulted in increased production at the Unit.

73. The modifications triggered a "significant" increase in CO, PM_{10}, NO_x, SO_2, and TRS emissions as defined in 40 C.F.R. § 52.21(b)(23) (1994), and 30 TAC § 116.160 (1999).

74. In failing to apply for or obtain authority, via the necessary permits, prior to modifying Unit No. 2 at the Facility in or about November 2002, 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) through (r) and 40 C.F.R. § 52.21(i)(1) (1994), and 30 TAC § 116.110(a) (1999).

75. In failing to apply BACT to the major modification made to Unit No. 2 at the Facility in or about November 2002, 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) (1994), and 30 TAC § 116.111(2)(C) (1999).

76. In reinitiating, and continuing to operate the Facility in or about November 2002, without obtaining or applying for the required permit to operate following completion of the major modifications to Unit No. 2 since November 2002, Respondent continues to accrue violations of applicable federal and state PSD regulations and 30 TAC § 116.160(a) (1999).

(5) Failure to Obtain PSD Permit Prior to Making Major Modifications to Units 1, 2, 3 and 4 at the Facility in or about November 2005 and August 2006 (CO, PM, NO_x, and SO_2 Emissions Increases)

77. In or about November 2005 through August 2006, Respondent made major modifications to the Facility, including, but not limited to, the installation of four standby primary bag filter flare tips and related equipment at Units No.1, No. 2, No. 3, and No.4. The modifications resulted in increased production at the Facility.

78. The modifications triggered "significant" increases in CO, PM, NO_x, and SO_2 emissions as defined in 40 C.F.R. § 52.21(b)(23) (1996), and 30 TAC § 116.160 (2002).

79. In failing to apply for or obtain authority, via the necessary permits, prior to modifying the Facility in or about November 2005 and August 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) through (r) and 40 C.F.R. § 52.21(i)(1) (1996), and 30 TAC § 116.110(a) (2001).

80. In failing to apply BACT to the major modifications made to the Facility in or about November 2005, 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) (1996), and 30 TAC § 116.111(1)(C) (1999).

81. In reinitiating, and continuing to operate the Facility in or about November 2005 and August 2006, without obtaining or applying for the required permit to operate following completion of the major modifications to the Facility since November 2005, Respondent continues to accrue violations of applicable federal and state PSD regulations and 30 TAC § 116.160 (2002).

(6) Failure to Obtain PSD Permit Prior to Making Major Modifications to Units No. 1 and Unit No. 2 June 2005 through June 2006 (CO, PM, NO_x, and SO_2 Emissions Increases)

82. In or about June 2006, Respondent made several modifications to Units No. 1 and No. 2 including, but not limited to, the installation of blowers and related equipment. The modifications resulted in increased production at the Facility.

83. These modifications triggered a "significant" increase in CO, PM_{10}, NO_x, and SO_2 emissions as defined in 40 C.F.R. § 52.21(b)(23) (1996), and 30 TAC § 116.160 (2002).

84. In failing to apply or obtain authority, via the necessary permits, prior to modifying the Facility in or about June 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) through (r) and 40 C.F.R. § 52.21(i)(1) (1996), and 30 TAC § 116.110(a) (2001).

85. In failing to apply BACT to the major modifications made to the Facility in or about June 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) (1996), and 30 TAC § 116.111(1)(C) (1999).

86. In reinitiating, and continuing to operate the Facility in or about June 2006, without obtaining or applying for the required permit to operate following completion of the major modifications to the Facility since June 2006, Respondent continues to accrue violations of applicable federal and state PSD regulations and 30 TAC § 116.160 (2002).

(7) Failure to Obtain PSD Permit Prior to Making Major Modifications to Unit No. 2 in or about September 2008 (CO, PM_{10}, NO_x, H_2S, TRS, and SO_2 Emissions Increases)

87. In or about September 2008, Respondent made modifications at Unit No. 2, including, but not limited to, the installation of a new air preheater, sootblower, and related equipment. The modifications resulted in increased production at the unit.

88. These modifications triggered "significant" increases in CO, PM_{10}, NO_x, SO_2, H_2S, and TRS emissions as defined in 40 C.F.R. § 52.21(b)(23) (1996), and 30 TAC § 116.111 (2003).

89. In failing to apply for or obtain authority, via the necessary permits, prior to modifying Unit No. 2 at the Facility in or about September 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) through (r) and 40 C.F.R. § 52.21(i)(1) (1996), and 30 TAC § 116.110(a) (2002).

90. In failing to apply BACT to the modifications made to Unit No. 2 at the Facility in or about September 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 modification, specifically those provided under 40 C.F.R. § 52.21(j)(3) (1996), and 30 TAC §116.111(1)(C) (2002).

91. In reinitiating, and continuing to operate the Facility in or about September 2008, without obtaining or applying for the required permit to operate following completion of the major modifications to Unit No. 2 since September 2008, Respondent continues to accrue violations of applicable federal and state PSD regulations and 30 TAC § 116.111 (2003).

(8) Failure to Obtain PSD Permit Prior to Making Major Modifications to Unit No. 4 September 2008 through July 2009 (CO, PM_{10}, NO_x, H_2S, TRS, and SO_2 Emissions Increases)

92. On or about September 2008 through July 2009, Respondent made modifications at Unit No. 4, including, but not limited to, the replacement and upgrade of four air preheaters and screw conveyers. The modifications resulted in increased production at the unit.

93. The modifications triggered a "significant" increase in CO, PM_{10}, NO_x, SO_2, H_2S, and TRS emissions as defined in 40 C.F.R. § 52.21(b)(23) (1996), and 30 TAC § 116.111 (2003).

94. In failing to apply for or obtain authority, via the necessary permits, prior to modifying Unit No. 4 at the Facility in or about November 2008 and July 2009, 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) through (r) and 40 C.F.R. § 52.21(i)(1) (1996), and 30 TAC § 116.110(a) (2002).

95. In failing to apply BACT to the major modifications made to Unit No. 4 at the Facility in or about November 2008 and July 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) (1996), and 30 TAC § 116.111(1)(C) (2002).

96. In reinitiating, and continuing to operate the Facility without obtaining or applying for the required permit to operate following completion of the major modifications to Unit No. 4 since the time period of November 2008 through July 2009, Respondent continues to accrue violations of applicable federal and state PSD regulations and 30 TAC § 116.111 (2003).

(9) Failure to Repair Visible Fugitive Leaks at Bag House Filter #3 Within 15 Days as Required Under Special Condition #6 of Permit No. 1867A/PSD-TX-1032

97. On or about January 5, 2009, Respondent was issued Permit No. 1867A/PSD-TX-1032. According to Special Condition 36 of the permit:

"There shall be a daily visual inspection for fugitive leaks of particulate and off-gas from the bag houses and product transfer system. All visibly leaking components shall be recorded in an inspection log book. Every reasonable effort shall be made to repair leaking components within 15 days after the leak is found. If the repair of a component would require a unit shutdown, the repair may be delayed until the next scheduled shutdown. All leaking components which cannot be repaired until a scheduled shutdown shall be identified for such repair."

98. On June 16, 2009, EPA inspectors observed visible fugitive particulate leaks from Bag House #3. The Respondent could not provide a log book that indicated that the visible leaks were recorded, nor could the Respondent identify that the leaking components were awaiting a scheduled shutdown for repairs.

99. Accordingly, Respondent is in violation of Special Condition #6 of Permit No. 1867A/ PSD-TX-1032.

(10) Failure to Monitor Flare #1, #2, #3, and #4 Closed Vent Systems Employing EPA Method 21 as Required by 40 C.F.R. § 63.983(c)

100. Respondent is subject to 40 C.F.R. § 63.980, National Emissions Standards For Hazardous Air Pollutants Subpart SS – National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process, as it applies to carbon black production. 40 C.F.R. §§ 63.1103(f), and 63.1104.

101. On or about June 17, 2009, EPA inspectors observed that the Respondent had failed to monitor the entire closed vent system for Flare #1, #2, #3, and #4 as required under 40 C.F.R. § 63.983(c).

102. Accordingly, Respondent is in violation of 40 C.F.R. § 63.983(c).

(11) Failure to Perform First Attempt at Repair of Leaks on Flare #3 and Flare #4 Valves Within 5 Days After Discovery of Leaks, as Required Under 40 C.F.R. §63.983(d)(2)(i)

103. Respondent is subject to 40 C.F.R. § 63.983(d)(2), NESHAPs Subpart SS – National Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process, as it applies to carbon black production. 40 C.F.R. §§ 63.1103(f), and 63.1104, and Special Condition #6 of Permit No. 1867A/PSD-TX 1032.

104. On or about June 17, 2009, EPA inspectors observed, facility work orders, that indicated that the Respondent failed to conduct a first attempt at repair of leaking valves on Flares No.3 and No. 4 within five days as is required under 40 C.F.R. § 63.983(d)(2).

105. Accordingly, Respondent is in violation of 40 C.F.R. § 63.983(d)(2).

(12) Failure to Conduct Performance Testing of Flares Within 180 Days from the Start-up of Each Flare as Required Under 40 C.F.R. § 63.7(a)(2)(ix)

106. Respondent is subject to performance testing. 40 C.F.R. § 63.1110(b); 40 C.F.R. §§ 63.9(b)(4)(v), and 63.7(a)(2)(ix).

107. On June 17, 2009, EPA inspectors determined that performance testing of Flares #1, #2, #3, and #4 failed to be conducted by the Respondent within 180 days following start-up of the flares, as required under 40 C.F.R. § 63.7(a)(2)(ix).

108. Accordingly, Respondent is in violation of 40 C.F.R. § 63.7(a)(2)(ix).

(13) Failure to Provide Notification of Initial Start-up of Flares #1, #2, #3, and #4 as Required Under 40 C. F. R. § 63.9(b)(4)(v)

109. Respondent is subject to 40 C.F.R. § 63.1110(b), and 40 C.F.R. § 63.9 (b) (4) (v), Notification requirements for affected sources.

110. On June 17, 2009, EPA inspectors requested and were provided information related to the installation and start-up of Flares#1, #2, #3, and #4, at the Facility. Inspectors found that the Respondent did not provide notification of initial start-up of Flares #1, #2, #3, and #4 within 15 days of actual start-up, as required by 40 C.F.R. §§ 63.1110(b), and 63.9(b)(4)(v).

111. Accordingly, Defendant is in violation of 40 C.F.R. § 63.9(b)(4)(v).

(14) Failure to Perform An Applicability Assessment On Water Legs At Closed Vents on Bag Houses #1, #2, #3, and #4 as Required Under 40 C.F.R. §§ 63.1104(a) and 63.1104(i)

112. Defendant is subject to 40 C.F.R. § 63.1100, (NESHAP Subpart YY – Generic (MACT) as it applies to Carbon Black Production (40 C.F.R. §§ 63.1103(f) and 63.1104(i)).

113. Pursuant to 40 C.F.R. § 63.1104(a), the owner or operator of a process vent is required to determine applicability of control requirements for process vents as discussed in 40 C.F.R. § 63.1104(i).

114. On June 17, 2009, EPA inspectors observed that the Respondent had failed to perform applicability assessments on the water leg vents on exhaust lines for Bag House #1, #2, #3, and #4 ad required under 40 C.F.R. §§ 63.1104(a), and 63.1104(i).

115. Accordingly, Respondent is in violation of 40 C.F.R. § 63.1104(i).

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

116. On September 19, 2003, Respondent obtained Federal Operating Permit No. O-1414. The Permit was revised on July 27, 2004 and on December 22, 2004. The Title V permit and the revised permit were deficient, as they did not include BACT requirements for projects that should have gone through PSD review for the following pollutants: CO, PM_{10}, NO_x, SO_2, H_2S, and TRS.

117. Further revisions to Permit No. O-1414 were issued on May 16, 2006. A renewal for Permit No. O-1414 was issued on December 8, 2008. The revised Title V Permit and the renewal Title V permit were deficient, as they did not include BACT requirements for projects that should have gone through PSD review for the following pollutants: CO, PM_{10}, NO_x, SO_2, H_2S, and TRS.

118. Accordingly, the Title V permit issued on September 19, 2003, the revised Title V permits issued on July 27, 2004, December 22, 2004, and May 16, 2006, and the renewal Title V permit issued on December 8, 2008, did not include emissions limitations for CO, PM_{10}, NO_x, SO_2, H_2S, and TRS that assure compliance with the PSD requirements of the Act and the Texas SIP.

119. In failing to assure compliance with all applicable emissions limitations, specifically those requiring that it incorporate BACT for CO, PM_{10}, NO_x, SO_2, H_2S, and TRS into its permit applications and subsequent permits, Respondent violated and continues to violate Sections 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) (2009) 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

SRCC may, upon request, confer with EPA. The conference will enable SRCC 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. SRCC has a right to be represented by counsel. A request for a conference or other inquiries concerning the Notice should be made in writing to:

Lorraine Dixon (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. Dixon at (214) 665-7589.

F. EFFECTIVE DATE

This NOV shall become effective immediately upon issuance.

Dated: SEP 18 2012

John Blevins
Director
Compliance Assurance and
Enforcement Division