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

REPLY TO THE ATTENTION OF:
(AE-17J)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jack Hansen
Vice President, Generation Engineering and Services
Consumers Energy
212 West Michigan Avenue
Jackson, Michigan 49201

Dear Mr. Hansen:

The U.S. Environmental Protection Agency is issuing the enclosed Notice of Violation (NOV) to Consumers Energy (you) under Section 113(a)(3) of the Clean Air Act (the Act), 42 U.S.C. § 7413(a)(3). We find that you are in violation of Section 165 of the Act, 42 U.S.C. § 7475, the Prevention of Significant Deterioration regulations at 40 C.F.R. § 52.21, and 40 C.F.R. Part 70 at your Campbell, Cobb, Karn, and Weadock, Michigan facilities.

We have several enforcement options under Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3). These options include issuing an administrative compliance order, issuing an administrative penalty order, and bringing a judicial civil or criminal action.

We are offering you an opportunity to confer with us about the violations alleged in the NOV. The conference will give you an opportunity to present information on the specific findings of violation, the efforts you have taken to comply, and the steps you will take to prevent future violations.

Please plan for your facilities' technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference.

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The EPA contact in this matter is Ray Cullen. You may call him at (312) 886-0538 to request a conference. You should also make the request within 10 calendar days following receipt of this letter. We should hold any conference within 30 calendar days following receipt of this letter.

Sincerely,

Cheryl L. Newton
Acting Director
Air and Radiation Division

Enclosure

cc: Jerome I. Maynard
Dykema Gossett PLLC
10 South Wacker Drive
Suite 2300
Chicago, Illinois 60606

Tom Hess, Enforcement Unit Supervisor
Michigan Department of Environmental Quality
Air Quality Division
525 West Allegan
P.O. Box 30260
Lansing, Michigan 48909-7760

Heidi Hollenbach, District Supervisor
Michigan Department of Environmental Quality
Grand Rapids District Office
State Office Building, 5th Floor
350 Ottawa Avenue NW, Unit 10
Grand Rapids, Michigan 49503-2341

Mark Reed, District Supervisor
Michigan Department of Environmental Quality
Saginaw Bay District Office
503 North Euclid Avenue, Suite 1
Bay City, Michigan 48706-2965

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:	)	
	)	
Consumers Energy	)	NOTICE OF VIOLATION
West Olive, Muskegon, and Essexville,	)	
Michigan	)	EPA-5-08-MI-22
	)	
	)	
Proceedings Pursuant to Section 113(a)(3)	)	
of the Clean Air Act, 42 U.S.C.	)	
§ 7413(a)(3)	)	

NOTICE OF VIOLATION

The U.S. Environmental Protection Agency finds that Consumers Energy (Consumers), formerly known as Consumers Power Company, is violating Section 165 of the Clean Air Act (the Act), 42 U.S.C. § 7475, the Prevention of Significant Deterioration (PSD) regulations at 40 C.F.R. § 52.21, and 40 C.F.R. Part 70 at its Campbell, Cobb, Karn, and Weadock facilities, as follows:

Statutory and Regulatory Authority

1. When the Act was passed in 1970, Congress exempted existing facilities, including the coal-fired power plants that are the subject of this Notice of Violation (NOV), from many of its requirements. However, Congress also made it quite clear that this exemption would not last forever. As the United States Court of Appeals for the D.C. Circuit explained in *Alabama Power v. Castle*, 636 F.2d 323, 400 (D.C. Cir. 1979), "[t]he statutory scheme intends to 'grandfather' existing industries; but ... this is not to constitute a perpetual immunity from all standards under the PSD program." Rather, the Act requires grandfathered facilities to install modern pollution control devices whenever the unit is proposed to be modified in such a way that its emissions may increase.

2. On June 19, 1978, EPA promulgated PSD regulations pursuant to Part C of Title I of the Act. 43 *Fed. Reg.* 26403 (June 19, 1978).

3. Part C of Title I of the Act, 42 U.S.C. §§ 7490-7492, establishes specific provisions applicable to the construction and modification of sources located in areas designated as either attainment or unclassifiable for the purposes of meeting the National Ambient Air Quality Standards (NAAQS). These statutory provisions and their implementing regulations at 40 C.F.R. § 52.21 are known as the PSD program, and prohibit major stationary sources from starting actual construction without a PSD permit and applying best available control technology (BACT) to control emissions of air pollutants.

4. Pursuant to Section 110 of the Act, 42 U.S.C. § 7410, each State is responsible for submitting to EPA for approval an implementation plan which specifies how the State will achieve, maintain, and enforce all primary and secondary NAAQS in the State.

5. Under Section 110(a) of the Act, each State Implementation Plan (SIP) must include a permit program to regulate the modification and construction of any stationary source of air pollution as necessary to assure that NAAQS are achieved. These plans are required to include enforceable emission limitations, control measures, and schedules for compliance. Upon EPA's approval of a SIP, the plans become independently enforceable by the federal government, as stated under Section 113(a) of the Act, 42 U.S.C. § 7413(a).

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

7. On August 7, 1980, EPA disapproved the State of Michigan's PSD program under Section 110(a)(3) of the Act, 42 U.S.C. § 7410(a)(3). EPA incorporated by reference the PSD regulations of 40 C.F.R. § 52.21(b) through (w) into the Michigan SIP at 40 C.F.R. § 52.1180(b). 45 *Fed. Reg.* 52741 (August 7, 1980).

8. Section 165(a) of the Act, 42 U.S.C. § 7475(a), and 40 C.F.R. § 52.21(i) prohibit construction of a major stationary source or a major modification in any attainment area or area designated as unclassifiable with respect to a particular criteria pollutant unless a permit has been issued for the proposed facility or modification pursuant to the applicable PSD regulations.

9. The PSD regulations, at 40 C.F.R. § 52.21(b)(1)(i)(a), define a "major stationary source" as, among other things, "a fossil fuel-fired steam electric plant of more than 250 million British Thermal Units per hour [mmBTU/hr] heat input" that "emits, or has the potential to emit, 100 tons per year [tpy] or more of any pollutant subject to regulation under the Act."

10. The PSD regulations, at 40 C.F.R. § 52.21(b)(2)(i), define a "major modification" as "any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act."

11. The PSD regulations, at 40 C.F.R. § 52.21(b)(2)(iii), state that a physical change or change in the method of operation (in reference to the definition of "major modification") shall not include, in part, routine maintenance, repair, and replacement.

12. The PSD regulations, at 40 C.F.R. § 52.21(b)(23)(i), define "significant," "in reference to a net emissions increase or the potential of a source to emit any of the [pollutants listed in

Section 52.21(b)(23)(i)]," as "a rate of emissions that would equal or exceed [40 tpy for nitrogen oxides (NO_X) and 40 tpy for sulfur dioxide (SO_2)]."

13. The PSD regulations, at 40 C.F.R. § 52.21(b)(3)(i), define a "net emissions increase" as "the amount by which the sum of the following exceeds zero: a) any increase in actual emissions from a particular physical change or change in method of operation at a stationary source; and b) any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable."

14. 40 C.F.R. § 52.21(b)(3)(ii) states that an increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between a) the date 5 years before construction on the particular change commences; and b) the date that the increase from the particular change occurs.

15. The PSD regulations, at 40 C.F.R. § 52.21(b)(21)(v), state that for an electric utility steam generating unit, "actual emissions of a unit following the physical or operational change shall equal the representative actual annual emissions of the unit, provided the source owner or operator maintains and submits to the Administrator on an annual basis for a period of 5 years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase."

16. The PSD regulations, at 40 C.F.R. § 52.21(b)(31), define an "electric utility steam generating unit" as "any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale."

17. The PSD regulations, at 40 C.F.R. § 52.21(b)(33), define "representative actual annual emissions" as "the average rate, in [tpy] at which the source is projected to emit a pollutant for the 2-year period after a physical change or change in the method of operation of a unit, (or a different consecutive 2-year period within 10 years after that change, where the Administrator determines that such period is more representative of normal source operations), considering the effect any such change will have on increasing or decreasing the hourly emissions rate and on projected capacity utilization."

18. Sections 501 through 507 of the Act, 42 U.S.C. §§ 7661 through 7661f, establish an operating permit program for major stationary sources and other sources made subject under Section 502(a) of the Act, 42 U.S.C. § 7661a(a).

19. Pursuant to Section 502(b) of the Act, 42 U.S.C. § 7661a(b), on July 21, 1992, EPA promulgated regulations establishing the minimum elements of a permit program to be administered by any air pollution control agency. 57 *Fed. Reg.* 32295 (July 21, 1992). These regulations are codified at 40 C.F.R. Part 70.

20. Section 502(d)(1) of the Act, 42 U.S.C. § 7661a(d)(1), requires that each State develop and submit for EPA's approval a permit program under State law.

21. Section 504(a) of the Act, 42 U.S.C. § 7661c(a), requires each operating permit (generally referred to as Title V permits) to contain all applicable emission limitations and standards of the Act for each major source.

22. 40 C.F.R § 70.2 defines "major source," in part, as any stationary source belonging to a single major industrial grouping and that directly emits or has to potential to emit greater than 100 tpy of any criteria air pollutant, 10 tpy of a single hazardous air pollutant, or 25 tpy of all hazardous air pollutants combined.

23. 40 C.F.R. § 70.3 provides that the requirements of Part 70 apply to any major source located in a State that has received whole or partial approval of its Title V program.

24. On December 4, 2001, EPA granted Michigan full approval of its Title V Clean Air Act Permit Program. 66 *Fed. Reg.* 62949 (December 4, 2001). The program became effective on November 30, 2001.

25. 40 C.F.R. § 70.5(a) requires the owner or operator of a Part 70 source to submit a timely and complete permit application.

26. 40 C.F.R. § 70.5(a)(2) defines "complete application" to include information that is "sufficient to evaluate the subject source and its application and to determine all applicable requirements."

27. 40 C.F.R. § 70.5(c) states, in part, that an application may not omit information needed to determine the applicability of, or to impose, any applicable requirement.

28. 40 C.F.R. § 70.5(b) states 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.

Finding of Fact

29. Consumers owns and operates the following power plants in Michigan that are the subject of this NOV: the J.H. Campbell Plant in West Olive; the B.C. Cobb Plant in Muskegon; and the D.E. Karn and J.C. Weadock Plants in Essexville.

30. Consumers' Campbell, Cobb, Karn and Weadock plants are each a "major stationary source," because they are each fossil fuel-fired steam electric plants of more than 250 mmBTU/hr heat input that emit 100 tpy or more of NO_X and SO_2.

31. Consumers' Campbell, Cobb, Karn, and Weadock plants are located in areas classified as attainment for NO_X and SO_2 for all time periods relevant to the violations cited herein.

32. The Campbell plant, at 17000 Croswell Street in West Olive, Michigan, consists, in part, of the following electric utility steam-generating units: Unit #1, with a startup date of October 1962 and a heat input capacity of 2,490 mmBTU/hr; and Unit #2, with a startup date of May 1967 and a heat input capacity of 3,560 mmBTU/hr.

33. The Cobb plant, at 151 North Causeway Drive in Muskegon, Michigan, consists, in part, of the following electric utility steam-generating units: Unit #4, with a startup date of September 1956 and a heat input capacity of 1,750 mmBTU/hr; and Unit #5, with a startup date of March 1957 and a heat input capacity of 1,750 mmBTU/hr.

34. The Karn plant, at 2742 & 2680 Weadock Highway in Essexville, Michigan, consists, in part, of the following electric utility steam-generating units: Unit #1, with a startup date of November 1959 and a heat input capacity of 2,500 mmBTU/hr; and Unit #2, with a startup date of March 1961 and a heat input capacity of 2,540 mmBTU/hr.

35. The Weadock plant, at 2555 North Weadock Highway in Essexville, Michigan, consists, in part, of the following electric utility steam-generating unit: Unit #8, with a startup date of January 1958 and a heat input capacity of 1,616 mmBTU/hr.

36. On July 19, 2000, and May 15, 2002, EPA issued information requests under Section 114(a) of the Act, 42 U.S.C. § 7414(a), to Consumers regarding projects and modifications of its coal-fired generating units that could potentially trigger PSD review. Consumers submitted responses to these information requests on August 18, 2000, and June 6 and 25, 2002.

37. Based on review of this information, EPA alleges that the following ten projects were subject to PSD review at the time of commencement because each project was a "major modification," as defined by the PSD regulations:

a. Campbell Unit #1 ([redacted])
- [redacted].
- [redacted].
- [redacted].

b. Campbell Unit #2 ([redacted])
- [redacted].
- [redacted].

c. Campbell Unit #2 ([redacted])
- [redacted].
- [redacted].
- [redacted].

d. Cobb Unit #4 ([redacted])

- [redacted].
- [redacted].
- [redacted].
- [redacted].

e. Cobb Unit #5 ([redacted])

- [redacted].
- [redacted].

f. Karn Unit #1 ([redacted])

- [redacted].
- [redacted].
- [redacted].

g. Karn Unit #1 ([redacted])

- [redacted].
- [redacted].

h. Karn Unit #2 ([redacted])

- [redacted].
- [redacted].

i. Weadock #8 ([redacted])

- [redacted].
- [redacted].

j. Weadock #8 ([redacted])

- [redacted].
- [redacted].
- [redacted].

Violations

38. The projects identified in paragraph 36, above, each caused a significant net emissions increase, as defined at 40 C.F.R. §§ 52.21(b)(3)(i) and (b)(23)(i), of NO_X and/or SO_2.

39. The projects identified in paragraph 36, above, each constituted a "major modification," as that term is defined at 40 C.F.R. § 52.21(b)(2)(i).

40. For the modifications listed in paragraph 36, above, Consumers failed to obtain a PSD permit as required by 40 C.F.R. § 52.21(i).

41. The modifications listed in paragraph 36, above, are "physical changes" not meeting the routine maintenance, repair, and replacement exemption of 40 C.F.R. § 52.21(b)(2)(iii).

42. Consumers is in violation of Section 165(a) of the Act, 42 U.S.C. § 7475(a), and 40 C.F.R. § 52.21(i)(1) by conducting major modifications at its Campbell, Cobb, Karn, and Weadock plants without applying for or obtaining PSD permits and operating the modified facilities without installing BACT or going through PSD review, and installing appropriate emission control equipment in accordance with a BACT analysis.

43. Consumers' Title V permit applications for its Campbell, Cobb, Karn, and Weadock plants failed to include the citation and description of all applicable requirements and other specific information that may be necessary to implement and enforce applicable requirements of the Act or to determine the applicability of such requirements, including, but not limited to, the requirement to apply/install BACT for NO_X and/or SO_2 for each of the physical changes described in paragraph 36, above, in violation of Title V of the Act, 40 C.F.R. § 70.5(a), and 40 C.F.R. § 70.5(c).

44. Consumers is in violation of 40 C.F.R. § 70.5(b) by failing to supplement or correct the Title V permit applications for its Campbell, Cobb, Karn, and Weadock facilities.

10/17/08
Date

FOR
Cheryl L. Newton
Acting Director
Air and Radiation Division

CERTIFICATE OF MAILING

I, Tracy Jamison, certify that I sent a Notice of Violation, No. EPA-5-08-MI-22, by Certified Mail, Return Receipt Requested, to:

Jack Hansen
Vice President, Generation Engineering and Services
Consumers Energy
212 West Michigan Avenue
Jackson, Michigan 492015

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

Jerome I. Maynard
Dykema Gossett PLLC
10 South Wacker Drive
Suite 2300
Chicago, Illinois 60606

Tom Hess, Enforcement Unit Supervisor
Michigan Department of Environmental Quality
Air Quality Division
525 West Allegan
P.O. Box 30260
Lansing, Michigan 48909-7760

Heidi Hollenbach, District Supervisor
Michigan Department of Environmental Quality
Grand Rapids District Office
State Office Building, 5th Floor
350 Ottawa Avenue NW, Unit 10
Grand Rapids, Michigan 49503-2341

Mark Reed, District Supervisor
Michigan Department of Environmental Quality
Saginaw Bay District Office
503 North Euclid Avenue, Suite 1
Bay City, Michigan 48706-2965

on the 20 day of October, 2008.

Tracy Jamison
Administrative Automation Clerk
AECAS, (MI/WI)

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