UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 5

IN THE MATTER OF: THE DAYTON POWER AND LIGHT COMPANY Proceeding Pursuant to Section 113(a)(1) of the Clean Air Act, 42 U.S.C. §7413(a)(1)	))))))))))	**Notice of Violation** **EPA-5-00-OH-22**

NOTICE OF VIOLATION

The United States Environmental Protection Agency (U.S. EPA), by the authority duly delegated to the undersigned, is issuing this Notice of Violation to The Dayton Power and Light Company (DP&L or Respondent) for violations of the Clean Air Act (Act), 42 U.S.C. §§ 7401-7671q, at the J.M. Stuart Generating Station (Stuart Station), a coal-fired power plant located at Aberdeen, Brown County, Ohio 45101.

At various times [redacted] DP&L has modified and operated the Stuart Station without obtaining Prevention of Significant Deterioration (PSD) permits requiring, among other things, the installation of Best Available Control Technology (BACT) as required by the Act and by the Ohio state implementation plan (SIP). These violations have resulted in significant net increases in particulate matter (PM), sulfur dioxide (SO_2) and nitrogen oxide (NO_x) emissions. Failure to install BACT results in excess emissions of thousands of tons of SO_2, NO_x and/or PM which will continue unless these violations are corrected.

The U.S. EPA is issuing this Notice pursuant to Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1). Section 113(a) requires the Administrator of U.S. EPA to issue a notice of violation to any person in violation of a SIP.

STATUTORY AND REGULATORY BACKGROUND

1. . When Congress passed the Act, it exempted existing facilities 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. Costle, 636 F.2d 323 (D.C. Cir. 1979), "the 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 when units are modified in such a way that their emissions may increase.

2. Part C of Title I of the Act and the PSD regulations implementing Part C, at 40 C.F.R. § 52.21, prohibit a major stationary source from constructing a modification without first obtaining a PSD permit if the modification is major in that it will result in a significant net increase in emissions of a regulated pollutant and if the source is located in an area which has achieved the National Ambient Air Quality Standards (NAAQS) for that pollutant. Part C and its implementing regulations further require that a source subject to PSD regulations install BACT.

3. A major stationary source is defined at 40 C.F.R. § 52.21(b)(1)(i)(a) to include certain listed stationary sources of air pollutants which emit, or have the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Act. This list explicitly includes fossil fuel-fired steam electric plants of more than 250 mmBTU. See 40 C.F.R. § 52.21(b)(1)(i)(a).

4. 40 C.F.R. § 52.21(B)(3)(i) defines "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 (emphasis added); and
(b) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable."

5. U.S. EPA amended the PSD regulations in 1992 to allow an electric utility steam generating unit that is implementing a physical change or change in operation to determine whether the change will result in a significant emissions increase by equating actual emissions of the unit following the physical or operational change with 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 five years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. 40 C.F.R. § 52.21(b)(21)(v).

6. "Actual emissions" are defined at 40 C.F.R. § 52.21(b)(21). In general, actual emissions as of a particular date equal 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 operations. Actual emissions are calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the time period. 40 C.F.R. § 52.21(b)(21)(ii).

7. 40 C.F.R. § 52.21(b)(21)(iii) allows the Administrator to presume that source specific allowable emissions for a unit are equivalent to the actual emissions of the unit.

8. The PSD regulations were incorporated by reference into the Ohio SIP on August 7, 1980. 40 C.F.R. § 52.1884 (45 Fed. Reg. 52741).

9. The SIP provisions identified in this Notice are federally enforceable pursuant to Sections 110 and 113 of the Act, 42 U.S.C. §§ 7410 and 7413.

FACTUAL BACKGROUND

10. DP&L owns and/or operates the J.M. Stuart Generating Station (Stuart Station), a fossil fuel-fired electric utility steam generating plant located at Aberdeen, Brown County, Ohio 45101. The Stuart Station consists of four boiler units

with approximately 2440 megawatts (MW) total generating capacity. The plant began operating the first boiler unit in approximately 1971, the second boiler unit in approximately 1970, the third boiler unit in approximately 1972, and the fourth boiler unit in approximately 1974.

11. The Stuart Plant is located in an area that has been classified as follows:
    a. For Ozone, attainment or unclassifiable from 1980 to present (except 1981 to 1983 when Brown county was non-attainment for ozone);
    b. For SO_2, attainment from 1980 to present;
    c. For PM, attainment or unclassifiable from 1980 to present.

12. The Stuart plant emits or has the potential to emit at least 100 tons per year of PM, NO_x and SO_2 and is a major stationary source under the Act.

VIOLATIONS

13. Between [redacted], DP&L "modified" the Stuart plant as defined at 40 C.F.R. § 52.21(b). These modifications include, but are not limited to, [redacted]

14. Each of these modifications resulted in a "significant net increase" in PM emissions, and/or NO_x emissions, and/or SO_2 emissions as defined at 40 C.F.R. § 52.21(b)(3) and (23).

15. The modifications at the Stuart plant did not constitute "routine maintenance, repair and replacement" and therefore were not exempt from PSD requirements pursuant to 40 C.F.R. § 52.21(b)(2)(iii). Each of these changes constituted replacement of a boiler component with a long useful life. Each modification was performed to increase capacity, regain lost capacity, and/or extend the useful life of the unit.

16. None of the modifications at the Stuart plant qualify for the "demand growth" exclusion found at 40 C.F.R. § 52.21(b)(33)(ii) because the emissions increases which

occurred after each modification resulted from the modification.

17. DP&L did not obtain a PSD permit prior to constructing these modifications to the Stuart Station as required by 40 C.F.R. § 52.21 and by the Ohio SIP, nor did DP&L provide any information to U.S. EPA regarding actual emissions after the modification as required by 40 C.F.R. § 52.21(b)(21)(v).

18. DP&L violated and continues to violate 40 C.F.R.§ 52.21 and the Ohio SIP by constructing and operating major modifications at the Stuart Station without first obtaining PSD permits.

19. Each of the violations has continued from the start of construction of the modification and will continue until DP&L obtains the appropriate PSD permits and installs the required BACT.

ENFORCEMENT

Pursuant to Section 113(a)(1) of the Act, at any time after the expiration of 30 days following the date of the issuance of this Notice, the Administrator may, without regard to the period of violation, issue an order requiring compliance with the requirements of the SIP or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties of not more than $25,000 per day for each violation before January 30, 1997, and no more than $27,500 per day for each violation after January 30, 1997. See 31 U.S.C. § 3701.

OPPORTUNITY FOR CONFERENCE

Respondent may, upon request, confer with U.S. EPA. The conference will enable Respondent to present evidence bearing on the finding of violation, on the nature of violation, and on any efforts they may have taken or propose to take to achieve compliance. Respondent has a right to be represented by counsel. Respondent must make any request for a conference within 10 days of receiving this Notice, and should make the request for a conference or other inquiries concerning the Notice in writing to:

Loren Denton
U.S. Environmental Protection Agency, Region 5
Air and Radiation Division
77 West Jackson Boulevard (AE-17J)
Chicago Illinois 60604
(312) 886-6814

6/30/00
Date

Bharat Mathur, Director
Air and Radiation Division

CERTIFICATE OF MAILING

I, Betty Williams, certify that I sent a Notice of Violation, No. EPA-5-00-OH-22, by Certified Mail, Return Receipt Requested, to:

Cliff Waits, Station Manager
J.M. Stuart Generating Station
Dayton Power & Light Company
P.O. Box 458
Aberdeen, Ohio 45101

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

Athan A. Vinolus, Associate Counsel
The Dayton Power and Light Company
P.O. Box 8825
Dayton, Ohio 45401

Robert Hodanbosi, Chief
Division of Air Pollution Control
Ohio Environmental Protection Agency
Lazarus Government Center
P.O. Box 1049
Columbus, Ohio 43216-1049

Phillip Thompson, Director
Air Pollution Unit
Portsmouth City Health Department
740 Second Street
Portsmouth, Ohio 45662

on the 30th day of June, 2000.

Betty Williams

Betty Williams, Secretary
AECAS, (IL/IN)

CERTIFIED MAIL RECEIPT NUMBER: Z 199 026 421