UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

MAY 09 2000

James Hendricks, Vice President
Corporate Environment, Health and Safety
Duke Energy Corporation
422 South Church Street
Charlotte, NC 28201

SUBJ: Notice of Violation

Dear Mr. Hendricks:

Enclosed is a Notice of Violation (NOV) issued to Duke Energy Corporation under Section 113(a)(1) of the Clean Air Act, 42 U.S.C. §7413(a)(1). In the NOV the Environmental Protection Agency notifies Duke Energy Corporation of violations of pre-construction permitting requirements under federal regulations and under State Implementation Plans at the power plants identified in the NOV.

Please note the opportunity to confer outlined in the NOV. As indicated in the NOV, any request to confer should be directed to Mr. Alan Dion, Associate Regional Counsel. Mr. Dion can be reached at (404)562-9587.

Sincerely,

John H. Hankinson, Jr.
for Regional Administrator

Enclosure

cc: Alan W. Klimek, NCDENR
James A. Joy, SCDHEC

EPA40RC003091

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:	)	Notice of Violation
	)	CAA-04-2000-0053
Duke Energy Company, Inc.,	)	
	)	
	)	
Proceedings Pursuant to	)	
Section 113(a)(1) of the	)	
Clean Air Act, 42 U.S.C.	)	
§7413(a)(1)	)	
	)	

NOTICE OF VIOLATION

This Notice of Violation (NOV) is issued to the Duke Energy Company, Inc. (Duke), for violations of the Clean Air Act (the Act) at all the coal-fired power plants identified below. Duke has embarked on a program of modifications intended to extend the useful life and/or regain lost generating capacity at their coal-fired power plants. Commencing at various times since 1977 to the present, Duke has modified and operated the coal-fired power plants identified below without obtaining New Source Review (NSR) permits authorizing the construction and operation of physical modifications of their boiler units as required by the State Implementation Plans (SIPs) of the states of North Carolina and South Carolina. In addition, for each of these physical modifications at these power plants, Duke has operated these power plants without installing pollution control equipment able to achieve the Best Available Control Technology (BACT)/Lowest Achievable Emissions Rate (LAER) as would be required under an NSR permit. Thus, these violations of the SIPs of North Carolina and South Carolina have resulted in massive amounts of sulfur dioxide (SO_2), nitrogen oxides (NO_x), and/or particulate matter (PM) having been and still being released into the environment.

This NOV is issued pursuant to Section 113(a)(1) of the Act, as amended, 42 U.S.C.A. Section 7401-7671q. Section 113(a) of the Act requires the Administrator of the United States Environmental Protection Agency (EPA) to notify any person in violation of a state implementation plan or permit of the violations. The authority to issue this NOV has been delegated to the Regional Administrator, EPA, Region 4.

STATUTORY AND REGULATORY BACKGROUND

1. When the Clean Air Act (Act) was passed, Congress 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 whenever the unit is proposed to be modified in such a way that its emissions may increase.

2. The NSR provisions of Parts C and D of Title I of the Act require preconstruction review and permitting for modifications of stationary sources. If a major stationary source is planning upon making a modification that will result in a net significant emission increase, then that source must obtain either a Prevention of Significant Deterioration (PSD) permit or a nonattainment NSR permit, depending on whether the source is located in an attainment or a nonattainment area for the pollutant being increased above the significance level. To obtain this permit, the source must agree to put on the best available control technology (BACT) for an attainment pollutant or achieve the lowest achievable emission rate (LAER) in a nonattainment area.

3. Pursuant to Part C of the Act, the SIP of North Carolina requires that no construction or operation of a major modification to a major stationary source occur in an area designated as attainment without first obtaining a permit under 40 C.F.R. § 52.21(i), and North Carolina Administrative Code at Title 15A, Chapter 2, Subchapter 2D, Section .0530 (15A NCAC 2D.0530), which was effective on June 1, 1981, and approved by EPA as part of the federally-enforceable North Carolina SIP on February 23, 1982, at 47 Fed. Reg. 7836, and amended on June 18, 1990, at 55 Fed. Reg. 23735, and on February 1, 1996 (61 Fed. Reg. 3584).

4. Pursuant to Part C of the Act, the SIP of South Carolina requires that no construction or operation of major modification of a major stationary source occur in an area designated as attainment without first obtaining a permit under 40 C.F.R. § 52.21(i), and South Carolina Regulation 62.5, Standard No. 7, which is part of the South Carolina SIP that was approved by EPA on February 10, 1982, at 40 Fed Reg. 6018, and amended on October 3, 1989 (54 Fed. Reg. 40662) and most recently amended on August 20, 1997 (62 Fed. Reg. 44219).

5. Pursuant to Part D of the Act, the SIP of North Carolina requires that no construction or operation of a major modification of a major stationary source occur in an area designated as nonattainment without first obtaining a permit under North Carolina Administrative Code at Title 15A, Chapter 2, Subchapter 2D, Section .0531 (15A NCAC 2D.0531) of the North Carolina SIP that was effective on June 1, 1981, and approved by EPA as part of the North Carolina SIP on July 26, 1982, at 47 Fed. Reg. 32118, as amended on June 18, 1990, at 55 Fed. Reg. 23735, and on August 1, 1997 (62 Fed. Reg. 41277).

6. The SIP of North Carolina requires that no construction, modification or operation of any facility which may result in air pollution shall occur without first obtaining a permit under North Carolina Administrative Code at Title 15A, Chapter 2, Subchapter 2Q, Section .0101 (15A NCAC 2Q.0101). This rule was approved as part of the North Carolina SIP on May 31, 1972 at 37 Fed. Reg. 10842, and amended on February 1, 1996, at 61 Fed. Reg. 3584.

7. The SIP of South Carolina requires that no construction, modification or operation of any facility which may result in air pollution shall occur without first obtaining a permit under South Carolina Regulation 62.1, Section II, which is part of the South Carolina SIP that was approved by EPA on May 31, 1972, at 37 Fed. Reg. 10892, and amended on February 4, 1992, at 57 Fed. Reg. 4158.

8. The SIP provisions identified in paragraphs 3-7 above are all federally enforceable pursuant to Sections 110 and 113 of the Act.

FACTUAL BACKGROUND

9. Duke, which has its headquarters in Charlotte, North Carolina, owns and controls each of the power plants identified below.

10. Duke directly participated in the conduct that led to the violations of the CAA identified below.

11. Duke operates the GG Allen Plant, a fossil fuel-fired electric utility steam generating plant located at South Point Road, Gaston County, Belmont, North Carolina, 28012. The plant consists of five coal-fired boiler units with up to 1140 megawatts of capacity, and began operating in the 1950's.

12. The Allen Plant is located in an area that has the following attainment/nonattainment classifications from 1980 to the present:
    - For NO_2, the area has been classified attainment or unclassified;
    - For SO_2, the area has been classified attainment or unclassified;
    - For PM, the area has been classified attainment or unclassified.
    - For ozone, the area was classified as nonattainment for ozone from November 15, 1990 until July 5, 1995.

13. Duke operates the Belews Creek Plant, a fossil fuel-fired electric utility steam generating plant located at Pine Hall Road, Stokes County, Walnut Cove, North Carolina, 27052. The plant consists of two coal-fired boiler units with 2240 megawatts of capacity, and began operating in 1974.

14. The Belews Creek Plant is located in an area that has the following attainment/nonattainment classifications from 1980 to the present:
    - For NO_2, the area has been classified attainment or unclassified;
    - For SO_2, the area has been classified attainment or unclassified;
    - For PM, the area has been classified attainment or unclassified;
    - For ozone, the area has been classified attainment or unclassified.

15. Duke operates the Buck Plant, a fossil fuel-fired electric utility steam generating plant located at 1555 Dukeville Road, Rowan County, Spencer, North Carolina, 28145. The plant consists of four coal-fired boiler units with 241 megawatts capacity, and began operating in 1940, or earlier.

16. The Buck Plant is located in an area that has the following attainment/nonattainment classifications from 1980 to the present:
    - For NO_2, the area has been classified attainment or unclassified;
    - For SO_2, the area has been classified attainment or unclassified;
    - For PM, the area has been classified attainment or unclassified;
    - For ozone, the area has been classified attainment or unclassified.

17. Duke operates the Cliffside Plant, a fossil fuel-fired electric utility steam generating plant located at SR 1002, Duke Power Road, Cliffside, Rutherford County, North Carolina, 28024. The plant consists of five coal-fired boiler units with 760 megawatts capacity, and began operating in 1940.

18. The Cliffside Plant is located in an area that has the following attainment/nonattainment classifications from 1980 to the present:
    - For NO_2 the area has been classified attainment or unclassified;
    - For SO_2, the area has been classified attainment or unclassified;
    - For PM, the area has been classified attainment or unclassified;
    - For ozone, the area has been classified attainment or unclassified.

19. Duke operates the Dan River Plant, a fossil fuel-fired electric utility steam generating plant located at 900 South Edgewood Road, Rockingham County, Eden, North Carolina, 27288. The plant consists of three coal-fired boiler units with 282 megawatts of capacity, and began operating in 1949.

20. The Dan River Plant is located in an area that has the following attainment/nonattainment classifications from 1980 to the present:
    - For NO_2, the area has been classified attainment or unclassified;
    - For SO_2, the area has been classified attainment or unclassified;
    - For PM, the area has been classified attainment or unclassified;
    - For ozone, the area has been classified attainment or unclassified.

21. Duke operates the Marshall Plant, a fossil fuel-fired electric utility steam generating plant located at 8320 East Hwy. 150, Catawba County, Terrell, North Carolina, 28682. The plant consists of four coal-fired boiler units with 2090 megawatts of capacity, and began operating in 1970, or earlier.

22. The Marshall Plant is located in an area that has the following attainment/nonattainment classifications from 1980 to the present:
    - For NO_2, the area has been classified attainment or unclassified;
    - For SO_2, the area has been classified attainment or unclassified;
    - For PM, the area has been classified attainment or unclassified;
    - For ozone, the area has been classified attainment or unclassified.

23. Duke operates the Riverbend Plant, a fossil fuel-fired electric utility steam generating plant located at 175 Steam Plant Road, Gaston County, Mt. Holly, North Carolina, 28020. The plant consists of four coal-fired boiler units with 454 megawatts of capacity, and began operating in 1952, or earlier.

24. The Riverbend Plant is located in an area that has the following attainment/nonattainment classifications from 1980 to the present:
    - For NO_2, the area has been classified attainment or unclassified;
    - For SO_2, the area has been classified attainment or unclassified;
    - For PM, the area has been classified attainment or unclassified.
    - For ozone, the area was classified as nonattainment for ozone from November 15, 1990 until July 5, 1995.

25. Duke operates the W.S. Lee Plant, a fossil fuel-fired electric utility steam generating plant located at SR 178, Anderson County, Pelzer, South Carolina, 29669. The plant consists of three coal-fired boiler units with 370 megawatts capacity, and began operating in 1951.

26. The Lee Plant is located in an area that has the following attainment/nonattainment classifications from 1980 to the present:

- For NO_2, the area has been classified attainment or unclassified;
- For SO_2, the area has been classified attainment or unclassified;
- For PM, the area has been classified attainment or unclassified;
- For ozone, the area has been classified attainment or unclassified.

27. Each of the plants identified in paragraphs 11 through 26 above emits or has the potential to emit at least 100 tons per year of NOx, SO_2 and/or PM.

VIOLATIONS

A. Allen Steam Plant, 2000 Project

28. In January 2000, Duke "commenced construction" as that term is defined in the EPA PSD regulations, 40 C.F.R. § 51.21(b), and the North Carolina SIP, 15A NCAC 2D.0530(b), on a major boiler overhaul at the Allen Plant in Belmont North Carolina. This work is expected to be completed by June 2000.

29. For each of the new source construction projects that is ongoing at the Allen Plant Unit 5 boiler overhaul, Duke did not obtain a PSD permit pursuant to North Carolina SIP Rule 15A NCAC 2D.0530, nor a minor NSR permit pursuant to North Carolina SIP Rule 15A NCAC 2Q.0101.

30. None of these modifications fall within the "routine maintenance, repair and replacement" exemption found at 40 C.F.R. § 52.21(b)(2)(iii)(a), or the North Carolina SIP, 15A NCAC 2D.0530(b). Each of these changes involves a large expensive capital expenditure performed infrequently at the plant that constitutes the replacement and/or redesign of a boiler component with a long useful life that is being done at the end of that useful life. In each instance, the change is being performed to regain lost capacity, extend the life of the unit, and/or create new capacity.

31. None of these modifications fall within the "demand growth" exemption found at 40 C.F.R. § 52.21(b)(33)(ii), and in the North Carolina SIP pursuant to 15A NCAC 2D.0530(b), because for each modification a physical change is being performed which resulted in the emissions increase.

32. This new source construction will result in a net significant increase in emissions, as that term is defined in 40 C.F.R. § 52.21(b), and 15A NCAC 2D.0530(b) of the North Carolina SIP, for NOx, SO_2 and/or PM from the Allen Plant.

33. Therefore, Duke has violated and will continue to violate by constructing the Allen Plant without the necessary permit required by EPA and the North Carolina SIP.

34. Each of these violations exists from the date of start of construction until the time that Duke obtains the appropriate NSR permit and installs the necessary pollution control equipment to satisfy the North Carolina SIP.

B. Allen Steam Plant

35. On numerous occasions between 1979 and the date of this NOV, Duke commenced construction of "modifications" as defined by the North Carolina SIP, pursuant to 15 NCAC 2D.0530(b), with respect to the Allen Plant in Belmont, North Carolina.

36. These modifications included, but are not limited to, the following individual modifications or combinations of such modifications: replacement of the economizer in the superheat and reheat furnaces for Unit 5 in 1996; replacement of the economizer and superheat header and crossover tubing for Unit 4, in 1996; Overhaul of boiler for Unit 4 in 1998; replacement and redesign of tubing associated with the superheater for Unit 3 in 1994; replacement and redesign of major components of the boiler for Unit 2 in 1988; and replacement and redesign of major components of the boiler for Unit 1 in 1989.

37. For each of these modifications that occurred at the Allen Plant, Duke did not obtain a PSD permit pursuant to the North Carolina SIP, 15A NCAC 2D.0530, a nonattainment NSR permit pursuant to the North Carolina SIP, 15A NCAC 2D.0531, nor a minor NSR permit pursuant to the North Carolina SIP, 15A NCAC 2Q.0101. In addition, for modifications after 1992, no documentation was provided to the permitting agency of actual emission after the modification as required by the North Carolina SIP, 15A NCAC 2D.0530(b).

38. None of these modifications fall within the "routine maintenance, repair and replacement" exemption found at 40 C.F.R. § 52.21(b)(2)(iii)(a), or the North Carolina SIP, 15A NCAC 2D.0530(b). Each of these changes was a large expensive capital expenditure performed infrequently at the plant that constituted the replacement and/or redesign of a boiler component with a long useful life that was done at the end of that useful life. In each instance, the change was performed to regain lost capacity, extend the life of the unit, and/or create new capacity.

39. None of these modifications fall within the "demand growth" exemption found at 40 C.F.R. § 52.21(b)(33)(ii), and in the North Carolina SIP pursuant to 15A NCAC 2D.0530(b), because for each modification a physical change was performed which resulted in the emissions increase.

40. Each of these modifications resulted in a net significant increase in emissions, as those terms are defined at 40 C.F.R. § 52.21(b)(3) and (23), and within the North Carolina SIP pursuant to 15A NCAC 2D.0530(b), from the Allen Plant for NOx, SO_2 and/or PM.

41. Therefore, Duke violated and continues to violate by constructing and operating modifications at the Allen Plant without the necessary permit required by the North Carolina SIP.

42. Each of these violations exists from the date of start of construction of the modification until the time that Duke obtains the appropriate NSR permit and operates the necessary pollution control equipment to satisfy the North Carolina SIP.

C. Belews Creek Steam Station, 2000 Project

43. In February 2000, Duke commenced construction of "modifications" as defined by the North Carolina SIP, 15A NCAC 2D.0530(b), with respect to the Belews Creek Plant in Walnut Cove, North Carolina.

44. These modifications included, but are not limited to, the following individual modifications or combinations of such modifications: replacement and redesign both banks of the economizer, replacement of the horizontal reheater, and replacement of part of the waterwalls at Unit 1.

45. For each of these modifications that is occurring at the Belews Creek Plant, Duke did not obtain a PSD permit pursuant to the North Carolina SIP, 15A NCAC 2D.0530, nor a minor NSR permit pursuant to 15A NCAC 2Q.0101.

46. None of these modifications fall within the "routine maintenance, repair and replacement" exemption found at 40 C.F.R. § 52.21(b)(2)(iii)(a), or the North Carolina SIP, 15A NCAC 2D.0530(b). Each of these changes involves a large expensive capital expenditure performed infrequently at the plant that constitutes the replacement and/or redesign of a boiler component with a long useful life that is being done at the end of that useful life. In each instance, the change is being performed to regain lost capacity, extend the life of the unit, and/or create new capacity.

47. None of these modifications fall within the "demand growth" exemption found at 40 C.F.R. § 52.21(b)(33)(ii), and in the North Carolina SIP pursuant to 15A NCAC 2D.0530(b), because for each modification a physical change is being performed which results in the emissions increase.

48. Each of these modifications will result in a net significant increase in emissions, as those terms are defined by 40 C.F.R. § 52.21(b)(3) and (23), and within the North Carolina SIP pursuant to 15A NCAC 2D.0530(b),

from the Belews Creek Plant for NOx, SO_2 and/or PM.

49. Therefore, Duke has violated and will continue to violate by constructing modifications at the Belews Creek Plant without the necessary permits required by the North Carolina SIP.

50. Each of these violations exists from the date of start of construction of the modification until the time that Duke obtains the appropriate NSR permit and installs the necessary pollution control equipment to satisfy the North Carolina SIP.

D. Belews Creek Steam Station

51. On numerous occasions between 1979 and the date of this NOV, Duke commenced construction of "modifications" as defined by the North Carolina SIP, 15A NCAC 2D.0530(b), with respect to the Belews Creek Plant in Walnut Cove, North Carolina.

52. These modifications included, but are not limited to, the following individual modifications or combinations of such modifications: redesign and replacement of the pendant reheater section at Unit 2 in 1996; and replacement and redesign of both banks of the economizer, replacement of the horizontal reheater, and replacement of part of the waterwalls at Unit 2 in 1999.

53. For each of these modifications that occurred at the Belews Creek Plant, Duke did not obtain a PSD permit pursuant to the North Carolina SIP, 15A NCAC 2D.0530, nor a minor NSR permit pursuant to 15A NCAC 2Q.0101. In addition, for modifications after 1992, no documentation was provided to the permitting agency of actual emission after the modification as required under 15A NCAC 2D.0530(b).

54. None of these modifications fall within the "routine maintenance, repair and replacement" exemption found at 40 C.F.R. § 52.21(b)(2)(iii)(a), or the North Carolina SIP, 15A NCAC 2D.0530(b). Each of these changes was a large expensive capital expenditure performed infrequently at the plant that constituted the replacement and/or redesign of a boiler component with a long useful life that was done at the end of that useful life. In each instance, the change was performed to regain lost capacity, extend the life of the unit, and/or create new capacity.

55. None of these modifications fall within the "demand growth" exemption found at 40 C.F.R. § 52.21(b)(33)(ii), and in the North Carolina SIP pursuant to 15A NCAC 2D.0530(b), because for each modification a physical change was performed which resulted in the emissions increase.

56. Each of these modifications resulted in a net significant increase in emissions, as those terms are defined at 40 C.F.R. § 52.21(b)(3) and (23), and within the North Carolina SIP pursuant to 15A NCAC 2D.0530(b),

from the Belews Creek Plant for NOx, SO_2 and/or PM.

57. Therefore, Duke violated and continues to violate by constructing and operating modifications at the Belews Creek Plant without the necessary permits required by the North Carolina SIP.

58. Each of these violations exists from the date of start of construction of the modification until the time that Duke obtains the appropriate NSR permit and operates the necessary pollution control equipment to satisfy the North Carolina SIP.

E. Buck Steam Station

59. On numerous occasions between 1979 and the date of this NOV, Duke commenced construction of "modifications" as defined by the North Carolina SIP, 15 NCAC 2D.0530(b), with respect to the Buck Plant in Spencer, North Carolina.

60. These modifications included, but are not limited to, the following individual modifications or combinations of such modifications: refurbishment of Unit 3, including redesign of multiple boiler components, in 1994; refurbishment of Unit 4, including redesign of multiple boiler components, in 1994; refurbishment of Unit 5, including redesign of boiler components, in 1986 and 1991.

61. For each of these modifications that occurred at the Buck Plant, Duke did not obtain a PSD permit pursuant to the North Carolina SIP, 15A NCAC 2D.0530, a nonattainment NSR permit pursuant to the North Carolina SIP, 15A NCAC 2D.0531, nor a minor NSR permit pursuant to the North Carolina SIP, 15A NCAC 2Q.0101. In addition, for modifications after 1992, no documentation was provided to the permitting agency of actual emission after the modification as required by the North Carolina SIP, 15A NCAC 2D.0530.

62. None of these modifications fall within the "routine maintenance, repair and replacement" exemption found at 40 C.F.R. § 52.21(b)(2)(iii)(a), or the North Carolina SIP, pursuant to Rule 15A NCAC 2D.0530(b). Each of these changes was a large expensive capital expenditure performed infrequently at the plant that constituted the replacement and/or redesign of a boiler component with a long useful life that was done at the end of that useful life. In each instance, the change was performed to regain lost capacity, extend the life of the unit, and/or create new capacity.

63. None of these modifications fall within the "demand growth" exemption found at 40 C.F.R. § 52.21(b)(33)(ii), or in the North Carolina SIP pursuant to 15A NCAC 2D.0530(b), because for each modification a physical change was performed which resulted in the emissions increase.

64. Each of these modifications resulted in a net significant increase in emissions, as those terms are defined at 40 C.F.R. § 52.21(b), and within the North Carolina SIP at 15A NCAC 2D.0530(b), from the Buck Plant for NOx, SO_2 and/or PM.

65. Therefore, Duke violated and continues to violate by constructing and operating modifications at the Buck Plant without the necessary permit required by the North Carolina SIP.

66. Each of these violations exists from the date of start of construction of the modification until the time that Duke obtains the appropriate NSR permit and operates the necessary pollution control equipment to satisfy the North Carolina SIP.

F. Marshall Steam Plant

67. On numerous occasions between 1979 and the date of this NOV, Duke commenced construction of "modifications" as defined by the North Carolina SIP, 15 NCAC 2D.0530, with respect to the Marshall Plant in Terrell, North Carolina.

68. These modifications included, but are not limited to, the following individual modifications or combinations of such modifications: replacement of horizontal reheater and other boiler components at Unit 4 in 1990; boiler refurbishment and redesign of boiler components at Unit 3 in 1999; replacement of waterwall, lower econmomizer and other boiler work at Unit 2 in 1989; and replacement of primary superheater convection pass front wall and other work at Unit 2 in 1996.

69. For each of these modifications that occurred at the Marshall Plant, Duke did not obtain a PSD permit pursuant to the North Carolina SIP, 15A NCAC 2D.0530, a nonattainment NSR permit pursuant to the North Carolina SIP, 15A NCAC 2D.0531, nor a minor NSR permit pursuant to the North Carolina SIP, 15A NCAC 2Q.0101. In addition, for modifications after 1992, no documentation was provided to the permitting agency of actual emission after the modification as required by the North Carolina SIP, 15A NCAC 2D.0530(b).

70. None of these modifications fall within the "routine maintenance, repair and replacement" exemption found at 40 C.F.R. § 52.21(b)(2)(iii)(a), or the North Carolina SIP, 15A NCAC 2D.0530(b). Each of these changes was a large expensive capital expenditure performed infrequently at the plant that constituted the replacement and/or redesign of a boiler component with a long useful life that was done at the end of that useful life. In each instance, the change was performed to regain lost capacity, extend the life of the unit, and/or create new capacity.

71. None of these modifications fall within the "demand growth" exemption found at 40 C.F.R. § 52.21(b)(33)(ii), and in the North Carolina SIP

pursuant to 15A NCAC 2D.0530(b), because for each modification a physical change was performed which resulted in the emissions increase.

72. Each of these modifications resulted in a net significant increase in emissions, as those terms are defined at 40 C.F.R. § 52.21(b)(3) and (23), and within the North Carolina SIP pursuant to 15A NCAC 2D.0530(b), from the Marshall Plant for NOx, SO_2 and/or PM.

73. Therefore, Duke violated and continues to violate by constructing and operating modifications at the Marshall Plant without the necessary permit required by the North Carolina SIP.

74. Each of these violations exists from the date of start of construction of the modification until the time that Duke obtains the appropriate NSR permit and operates the necessary pollution control equipment to satisfy the North Carolina SIP.

G. Cliffside Steam Plant

75. On numerous occasions between 1979 and the date of this NOV, Duke commenced construction of "modifications" as defined by the North Carolina SIP, 15 NCAC 2D.0530(b), with respect to the Cliffside Plant in Rutherford County, North Carolina.

76. These modifications included, but are not limited to, the following individual modifications or combinations of such modifications: refurbishment of Unit 1, including redesign of multiple boiler components, in 1993; refurbishment of Unit 2, including redesign of multiple boiler components, in 1993; refurbishment of Unit 3 in 1990; refurbishment of Unit 4 in 1990; and redesign and replacement of the unit 5 economizer, and other work, in 1992 and 1995.

77. For each of these modifications that occurred at the Cliffside Plant, Duke did not obtain a PSD permit pursuant to the North Carolina SIP, 15A NCAC 2D.0530, a nonattainment NSR permit pursuant to the North Carolina SIP, 15A NCAC 2D.0531, nor a minor NSR permit pursuant to the North Carolina SIP, 15A NCAC 2Q.0101. In addition, for modifications after 1992, no documentation was provided to the permitting agency of actual emission after the modification as required by the North Carolina SIP, 15A NCAC 2D.0530(b).

78. None of these modifications fall within the "routine maintenance, repair and replacement" exemption found at 40 C.F.R. § 52.21(b)(2)(iii)(a), or the North Carolina SIP, 15A NCAC 2D.0530(b). Each of these changes was a large expensive capital expenditure performed infrequently at the plant that constituted the replacement and/or redesign of a boiler component with a long useful life that was done at the end of that useful life. In each instance, the change was performed to regain lost capacity, extend the life of the unit, and/or create new capacity.

79. None of these modifications fall within the "demand growth" exemption found at 40 C.F.R. § 52.21(b)(33)(ii), and in the North Carolina SIP pursuant to 15A NCAC 2D.0530(b), because for each modification a physical change was performed which resulted in the emissions increase.

80. Each of these modifications resulted in a net significant increase in emissions, as those terms are defined at 40 C.F.R. § 52.21(b)(3) and (23), and within the North Carolina SIP pursuant to 15A NCAC 2D.0530(b), from the Cliffside Plant for NOx, SO_2 and/or PM.

81. Therefore, Duke violated and continues to violate by constructing and operating modifications at the Cliffside Plant without the necessary permit required by the North Carolina SIP.

82. Each of these violations exists from the date of start of construction of the modification until the time that Duke obtains the appropriate NSR permit and operates the necessary pollution control equipment to satisfy the North Carolina SIP.

H. Dan River Steam Station

83. On numerous occasions between 1979 and the date of this NOV, Duke commenced construction of "modifications" as defined by the North Carolina SIP, 15A NCAC 2D.0530(b), with respect to the Dan River Plant in Eden, North Carolina.

84. These modifications included, but are not limited to, the following individual modifications or combinations of such modifications: refurbishment of Unit 3, including redesign of boiler components, in 1989.

85. For each of these modifications that occurred at the Dan River Plant, Duke did not obtain a PSD permit pursuant to the North Carolina SIP, 15A NCAC 2D.0530, nor a minor NSR permit pursuant to 15A NCAC 2Q.0101. In addition, for modifications after 1992, no documentation was provided to the permitting agency of actual emission after the modification as required pursuant to 15A NCAC 2D.0530(b).

86. None of these modifications fall within the "routine maintenance, repair and replacement" exemption found at 40 C.F.R. § 52.21(b)(2)(iii)(a), or the North Carolina SIP, 15A NCAC 2D.0530(b). Each of these changes was a large expensive capital expenditure performed infrequently at the plant that constituted the replacement and/or redesign of a boiler component with a long useful life that was done at the end of that useful life. In each instance, the change was performed to regain lost capacity, extend the life of the unit, and/or create new capacity.

87. None of these modifications fall within the "demand growth" exemption

found at 40 C.F.R. § 52.21(b)(33)(ii), and in the North Carolina SIP pursuant to 15A NCAC 2D.0530(b), because for each modification a physical change was performed which resulted in the emissions increase.

88. Each of these modifications resulted in a net significant increase in emissions, as those terms are defined at 40 C.F.R. § 52.21(b)(3) and (23), and within the North Carolina SIP pursuant to 15A NCAC 2D.0530(b), from the Dan River Plant for NOx, SO_2 and/or PM.

89. Therefore, Duke violated and continues to violate by constructing and operating modifications at the Dan River Plant without the necessary permits required by the North Carolina SIP.

90. Each of these violations exists from the date of start of construction of the modification until the time that Duke obtains the appropriate NSR permit and operates the necessary pollution control equipment to satisfy the North Carolina SIP.

I. Riverbend Steam Plant

91. On numerous occasions between 1979 and the date of this NOV, Duke commenced construction of "modifications" as defined by the North Carolina SIP, 15 NCAC 2D.0530(b), with respect to the Riverbend Plant in Mt. Holly, North Carolina.

92. These modifications included, but are not limited to, the following individual modifications or combinations of such modifications: refurbishment of Unit 4 in 1990; refurbishment of Unit 6 in 1991; and refurbishment of Unit 7, including redesign of boiler components, in 1992.

93. For each of these modifications that occurred at the Riverbend Plant, Duke did not obtain a PSD permit pursuant to the North Carolina SIP, 15A NCAC 2D.0530, a nonattainment NSR permit pursuant to the North Carolina SIP, 15A NCAC 2D.0531, nor a minor NSR permit pursuant to the North Carolina SIP, 15A NCAC 2Q.0101. In addition, for modifications after 1992, no documentation was provided to the permitting agency of actual emission after the modification as required by the North Carolina SIP, pursuant to 15A NCAC 2D.0530(b).

94. None of these modifications fall within the "routine maintenance, repair and replacement" exemption found at 40 C.F.R. § 52.21(b)(2)(iii)(a), or the North Carolina SIP, 15A NCAC 2D.0530(b). Each of these changes was a large expensive capital expenditure performed infrequently at the plant that constituted the replacement and/or redesign of a boiler component with a long useful life that was done at the end of that useful life. In each instance, the change was performed to regain lost capacity, extend the life of the unit, and/or create new capacity.

95. None of these modifications fall within the "demand growth" exemption found in 40 C.F.R. § 52.21(b)(33)(ii), or in the North Carolina SIP pursuant to 15A NCAC 2D.0530(b), because for each modification a physical change was performed which resulted in the emissions increase.

96. Each of these modifications resulted in a net significant increase in emissions, as those terms are defined in 40 C.F.R. § 52.21(b)(3) and (23), or within the North Carolina SIP pursuant to 15A NCAC 2D.0530(b), from the Riverbend Plant for NOx, SO_2 and/or PM.

97. Therefore, Duke violated and continues to violate by constructing and operating modifications at the Riverbend Plant without the necessary permit required by the North Carolina SIP.

98. Each of these violations exists from the date of start of construction of the modification until the time that Duke obtains the appropriate NSR permit and operates the necessary pollution control equipment to satisfy the North Carolina SIP.

J. Lee Steam Plant

99. On numerous occasions between 1979 and the date of this NOV, Duke commenced construction of "modifications" as defined by the South Carolina SIP, Regulation 62.5, Standard 7, Section I, with respect to the Lee Steam Plant in Pelzer, South Carolina.

100. These modifications included, but are not limited to, the following individual modifications or combinations of such modifications: refurbishment of Unit 3 in 1990.

101. For each of these modifications that occurred at the Lee Plant, Duke did not obtain a PSD permit pursuant to the South Carolina SIP, 62.5, Standard 7, Section III, nor a minor NSR permit pursuant to 62.1, Section II.

102. None of these modifications fall within the "routine maintenance, repair and replacement" exemption found at 40 C.F.R. § 52.21(b)(2)(iii)(a), or the South Carolina SIP, Regulation 62.5, Standard 7, Section III, Part B. Each of these changes was a large expensive capital expenditure performed infrequently at the plant that constituted the replacement and/or redesign of a boiler component with a long useful life that was done at the end of that useful life. In each instance, the change was performed to regain lost capacity, extend the life of the unit, and/or create new capacity.

103. None of these modifications fall within the "demand growth" exemption found in 40 C.F.R. § 52.21(b)(33)(ii), or in the South Carolina SIP, Regulation 62.5, Standard 7, because for each modification a physical change was performed which resulted in the emissions increase.

104. Each of these modifications resulted in a net significant increase in emissions, as those terms are defined at 40 C.F.R. § 52.21(b)(3) and (23), or within the South Carolina SIP at Regulation 62.5,Standard 7, Parts C and V, from the Lee Plant for NOx, SO_2 and/or PM.

105. Therefore, Duke violated and continues to violate by constructing and operating modifications at the Lee Plant without the necessary permits required by the South Carolina SIP.

ENFORCEMENT

Section 113(a)(1) of the Act provides that at any time after the expiration of 30 days following the date of the issuance of this NOV, the Regional Administrator may, without regard to the period of violation, issue an order requiring compliance with the requirements of the state implementation plan or permit, 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 on or before January 30, 1997, and no more than $27,500 per day for each violation after January 30, 1997.

OPPORTUNITY FOR CONFERENCE

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

Mr. Alan Dion
Associate Regional Counsel
Environmental Accountability Division
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
404-562-9587

By offering the opportunity for a conference or participating in one, EPA does not waive or limit its right to any remedy available under the Act.

Effective Date

This NOV shall become effective immediately upon issuance.

MAY 09 2000

Date

John H. Hankinson, Jr.
Regional Administrator
EPA, Region 4