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

SEP 29 2004

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

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mark Maassel, President
Northern Indiana Public Service Company
801 E. 86th Ave.
Merrillville, Indiana 46410

Re: Notice of Violation
Northern Indiana Public
Service Company; Michigan
City, R.M. Schahfer, and
Bailly Generating Stations

Dear Mr. Maassel:

The United States Environmental Protection Agency is issuing the enclosed Notice of Violation (NOV) to Northern Indiana Public Service Company (you). This NOV is issued in accordance with Section 113(a) of the Clean Air Act, 42 U.S.C. § 7413(a). We find that you are violating Title 1, Sections C and/or D, and Title V of the Clean Air Act as well as the Indiana State Implementation Plan at your Michigan City, Wheatfield, and Chesterton, Indiana facilities.

Section 113 of the Clean Air Act gives us several enforcement options. These options include issuing an administrative compliance order, issuing an administrative penalty order, and bringing a judicial civil or criminal action. The option we select may depend on, among other things, the length of time you take to achieve and demonstrate continuous compliance with the rules cited in the NOV.

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, any efforts you have taken to comply, and the steps you will take to prevent future violations.

Please plan for your facility's technical and management personnel to attend the conference to discuss compliance measures

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and commitments. You may have an attorney represent you at this conference.

The U.S. EPA contact in this matter is Kevin Vuilleumier. You may call him at (312) 886-6188 to request a conference. A written request should also be submitted to Louise Gross in accordance with the "Opportunity for Conference" portion of the enclosed NOV. You should make both requests as soon as possible, but no later than 10 calendar days after you receive this letter. We should hold any conference within 30 calendar days of your receipt of this letter.

Sincerely yours,

Stephen Rothblatt, Director
Air and Radiation Division

Enclosures

cc: David P. McIver, Chief
Office of Enforcement
Indiana Department of Environmental Management

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:	)	
	)	
Northern Indiana Public Service Corporation	)	Notice of Violation
	)	
Proceedings Pursuant to Section 113(a) of the Clean Air Act, 42 U.S.C. § 7413(a)	)	**EPA-5-04-IN-36**
	)	

NOTICE OF VIOLATION

This Notice of Violation ("NOV") is issued to Northern Indiana Public Service Corporation ("NIPSCo") for violations of the Clean Air Act ("CAA" or "Act"), as amended, 42 U.S.C. §§ 7401-7671q, and the Indiana State Implementation Plan ("Indiana SIP") at NIPSCo's Michigan City, R.M. Schahfer ("Schahfer"), and Bailly Electric Generating Stations. NIPSCo has embarked on a program of modifications at these coal-fired power plants.

Commencing at various times since 1985 and continuing through today, NIPSCo modified and operated certain boiler units at the Michigan City, Schahfer, and Bailly Stations without obtaining New Source Review ("NSR"), Prevention of Significant Deterioration ("PSD"), and/or NSR for minor source ("minor NSR") permits authorizing construction of physical modifications to the units and operation of the modified units, as required by provisions set out in the Act and incorporated into the Indiana State Implementation Plan ("SIP"). In addition, for each of the physical modifications at the Michigan City, Schahfer, and Bailly Stations, NIPSCo operated the modified units without installing pollution control equipment required by the Act and the Indiana SIP. NIPSCo has also violated Title V of the CAA by failing to address the PSD provisions of the CAA as applicable requirements in its Title V permit applications for the Michigan City, Schahfer, and Bailly Stations. These violations of the NSR, PSD, Title V and/or minor NSR requirements have resulted in the illegal release of excessive sulfur dioxide ("SO_2"), nitrogen oxides ("NO_x"), and particulate matter ("PM") emissions into the environment. Until these violations are corrected, NIPSCo will continue to illegally release excessive SO_2, NO_x, and/or PM emissions into the environment.

This NOV is issued pursuant to Section 113(a) of the Act, 42 U.S.C. § 7413(a). Section 113(a) of the Act requires the Administrator of the United States Environmental Protection Agency ("EPA") to notify any person in violation of SIP, or a permit, of the violations. The authority to issue this NOV has been delegated to the Director, Air and Radiation Division, U.S. EPA Region 5.

STATUTORY AND REGULATORY BACKGROUND

1. When the Act was passed in 1970, Congress exempted existing facilities, including the coal-fired power plants that are the subject of this NOV, from certain of its requirements. However, in the 1977 CAA Amendments, 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 a unit is proposed to be modified in such a way that its emissions may increase.

2. Section 110(a)(2) and Parts C and D of Title I of the Clean Air Act require preconstruction review and permitting for modifications of stationary sources. Pursuant to applicable regulations, if a major stationary source is planning to make one or more major modifications, then that source must obtain either a PSD permit or a non-attainment NSR permit, depending on whether the source is located in an attainment or a non-attainment area for the pollutant being increased above its specified significance level. To obtain the required permit, the source must agree to either meet an emission limit that represents the Best Available Control Technology ("BACT") for the pollutant(s) of concern in an attainment area or achieve the Lowest Achievable Emission Rate ("LAER") for the pollutant(s) of concern in a non-attainment area.

3. The statutory and regulatory requirements for PSD and the Indiana SIP prohibit construction or operation of a major modification to a major stationary source in an attainment area without first obtaining a PSD permit under 42 U.S.C. §§ 7470-7492 and 40 C.F.R. § 52.21. Pertinent provisions of 40 C.F.R. § 52.21, have been incorporated into the Indiana SIP pursuant to 40 C.F.R. § 52.793.

4. The statutory and regulatory requirements for NSR and the Indiana SIP prohibit construction or operation of a major modification to a major stationary source in an area designated as non-attainment without first obtaining a permit under APC 19. Based on modified definitions approved by U.S. EPA on November 5, 1981, 46 Fed. Reg.54941, APC 19 was approved on February 16, 1982, 47 Fed. Reg. 5621.

5. The statutory and regulatory requirements for minor NSR and the Indiana SIP prohibit construction or operation of a modification to an existing source without first obtaining a permit in accordance with 326 IAC 2-1.

6. The PSD, NSR and minor NSR provisions identified in paragraphs 3 and 4 are federally enforceable pursuant to Sections 110 and 113 of the Act, 42 U.S.C. §§ 7410 and 7413.

7. Pursuant to Section 502(a) of the Act, 42 U.S.C. § 7661(a), it is unlawful to operate without or in violation of a permit issued pursuant to subchapter V of the Act, 42 U.S.C. §§ 7661 *et. seq.*

8. Indiana's Part 70 program under subchapter V of the Act was granted interim approval by the Administrator on May 22, 1995, (60 Fed. Reg. 27064) and final approval on December 4, 2001, (66 Fed. Reg. 62969). These regulations are currently codified at 326 IAC 2-7. Pursuant to 326 IAC 2-7-3, no Part 70 source may operate after the time that it is required to submit a timely and complete application except in compliance with a Part 70 permit issued under the rule.

9. Pursuant to 326 IAC 2-7-4, the owner or operator of each Part 70 source has a duty to submit a timely and complete permit application.

10. Pursuant to 326 IAC 2-7-4(10), for each Part 70 source which is not in compliance at the time of a Part 70 permit issuance, the owner or operator of those sources is required to provide a narrative description of how the source will achieve compliance with such requirements.

11. Section 326 IAC 2-7-10 requires that a permit application must contain a certification of compliance with all applicable requirements.

12. Section 326 IAC 2-7-6 requires that a source submit compliance certifications annually.

13. Pursuant to 40 C.F.R.§ 70.1(b), all subject sources shall have Title V permits which ensure compliance with all applicable requirements.

FACTUAL BACKGROUND

14. NIPSCo owns and operates several electric generating stations in and around Northern Indiana which include, but are not limited to, Michigan City Station located in LaPorte, Indiana; Schahfer Station located in Jasper County, Indiana; and Bailly Station located in Porter County, Indiana.

15. The electric generating stations identified in paragraph 14 have one or more coal-fired electric generating units which include: Michigan City (Unit 12); Rollin M. Schahfer (Units 14, 15, 17, and 18); and Bailly (Units 7 and 8) and together have nameplate generation capacity of 2,776 MW.

16. Michigan City Unit 12 is a 500-MW coal-fired electric generating unit which was constructed in 1974. This unit controls PM emissions with an electorstatic precipitator ("ESP") and, since 1998, has overfire air to limit its emissions of NO_x. Michigan City, Unit 12 currently has no controls for sulfur dioxide.

17. Rollin M. Schahfer has four coal-fired electric generating units identified as Units 14, 15, 17 and 18. The units were constructed in 1976, 1979, 1983 and 1986, respectively, and have corresponding nameplate generation capacities of 468 MW, 502 MW, 393 MW and 393 MW. Each unit currently has an ESP control technology for PM emissions. Schahfer Units 15, 17 and 18 have low-NO_x burner technology with over-fire air to limit their NO_x emissions while Unit 14 has only over-fire air. Schahfer Units 14 and 15 have no control technology for sulfur dioxide emissions while Units 17 and 18 has wet, flue-gas de-sulfurization (wet-FGD) control technology.

18. Bailly has two coal-fired electric generating units identified as Units 7 and 8. These units were constructed in 1962 and 1968, respectively, and have corresponding nameplate generation capacities of 175 and 345 MW. PM emissions are controlled with ESPs which were installed in 1980. Unit 7 has no NO_x controls while Unit 8, since 2000, has over-fire air. Units 7 and 8 have wet-FGD, installed in 1992, for SO_2 control.

19. Since 1985, NIPSCo made various major capital expenditures on projects which resulted in major modifications to existing major sources. The major modifications, in turn, resulted in significant increases in emissions of sulfur dioxide (SO_2), nitrogen oxides (NO_x) and/or particulate matter (PM) from the units modified. These projects include, but are not limited to, the following:

    a. Michigan City Unit 12 [redacted]
        (1) [redacted], and
        (2) [redacted]

    b. Rollin M. Schahfer Unit 14 [redacted]:
        (1) [redacted]
        (2) [redacted] and
        (3) replacement of [redacted]

    c. Rollin M. Schahfer Unit 15 [redacted]
        (1) replacement and upgrade of [redacted]

    d. Bailly Unit 7 [redacted]
        (1) replacement of the [redacted]s,
        (2) replacement of the [redacted], and
        (3) replacement of the [redacted]

    e. Bailly Unit 8 [redacted]
        (1) replacement of the [redacted] and
        (2) replacement of the [redacted]

20. At all times since 1985, the Michigan City Station was located in an area classified as attainment for NO_2 and ozone (as volatile organic compounds ("VOCs").

21. At all times since 1985, the Schahfer Station was located in an area classified as attainment or unclassifiable for NO_2, ozone (as VOC), SO_2 and PM.

22. At all times since 1985, the Bailly Station was located in an area classified as attainment for NO_2.

23. At all times since 1985, the Michigan City Station was located in an area classified as non-attainment for SO_2.

24. At all times since 1985 the Bailly Station was located in an area classified as non-attainment for SO_2 and ozone

(as VOC).

25. The Michigan City, Schahfer, and Bailly electric generating units identified in paragraphs 9 through 11 are fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input. These units are major stationary sources under the Act and the Indiana State Implementation Plan since each unit emits or has the potential to emit at least 100 tons per year of NO_x, SO_2, and/or PM.

VIOLATIONS

26. On various occasions between 1985 and the date of this NOV, NIPSCo made modifications, as defined in the Indiana SIP, 40 C.F.R. § 52.21(b), APC 19 and 326 IAC 1.1-1, to Michigan City Unit 12, Schahfer Units 14 and 15, and Bailly Units 7 and 8.

27. For each of the modifications identified in paragraph 19 and referenced in paragraph 26, NIPSCo did not obtain an appropriate PSD or non-attainment NSR permit pursuant to 40 C.F.R. § 52.21 and APC 19, Sections 4 and 8.

28. Under the applicable Title V permit regulations, NIPSCo was required to identify all applicable requirements, identify a compliance schedule for those applicable requirements for which the Michigan City, Schahfer, and Bailly Stations were not already in compliance, and to certify their compliance with all applicable requirements. NIPSCo's Title V permit applications for the Michigan City, Schahfer, and Bailly Stations do not address PSD.

29. The modifications identified in paragraph 19 resulted in a significant net emissions increase of one or more regulated pollutants, under 40 C.F.R. § 52.21(b)(3)(i), from the Michigan City, Schahfer, and/or Bailly Stations of NO_x, SO_2, and/or PM.

30. Therefore, because of the modifications and significant net emissions increases, NIPSCo violated and continues to violate 40 C.F.R. §§ 52.21 and APC 19, by making modifications to existing major sources at the Michigan City, Schahfer and Bailly Stations and operating these modified sources without the appropriate permits required by Title 1, Sections C or D of the Clean Air Act as well as the Indiana SIP. The operation of these modified units without installing pollution control equipment and meeting emission

limits that would have been imposed by the permitting process is also a violation of 40 C.F.R. §§ 52.21 and APC 19.

31. Each of these violations exists from the initial date the modifications were begun until the time NIPSCo obtains the appropriate NSR/PSD permit, installs and operates the necessary pollution control equipment and meets the required LAER/BACT emission limits to satisfy the Clean Air Act and the Indiana SIP.

ENFORCEMENT

Section 113(a) 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 of EPA 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 before January 30, 1997, and no more than $27,500 per day for each violation on or after January 30, 1997.

OPPORTUNITY FOR CONFERENCE

NIPSCo may, upon request, confer with EPA regarding this NOV and the allegations contained within. The conference will enable NIPSCo to present evidence bearing on the findings of violation, on the nature of the violations, and on any efforts it may have taken or proposes to take to achieve compliance with the Clean Air Act and Indiana SIP at the Michigan City, Schahfer and Bailly Stations. NIPSCo has a right to be represented by counsel. A request for a conference must be made within 10 days of receipt of this Notice. Any request for such a conference or other inquiries concerning this Notice should be made in writing to:

Louise Gross (C-14J)
Associate Regional Counsel
U.S. Environmental Protection Agency
Region 5
77 W Jackson Blvd
Chicago, Illinois 60604

If you have technical questions regarding the violations cited herein, you may call Kevin Vuilleumier at (312) 886-6188.

9/29/04
Date

Stephen Rothblatt, Director
Air and Radiation Division