UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	
	)	
PORTLAND GENERAL ELECTRIC COMPANY	)	**NOTICE OF VIOLATION**
	)	
	)	
BOARDMAN, OREGON	)	
	)	
Respondent	)	
	)	

Pursuant to Section 113(a) of the Clean Air Act (CAA), 42 U.S.C. § 7413(a), the U.S. Environmental Protection Agency (EPA), through the Director of the Office of Compliance and Enforcement, upon the basis of available information, hereby issues the following Notice of Violation (Notice) to Portland General Electric Company (PGE or Respondent). The Notice alleges violations of the CAA at Respondent's coal-fired power plant in Boardman, Oregon (PGE Boardman Facility), including violations of the New Source Performance Standards under Section 111 of the CAA, 42 U.S.C. §§ 7411 et seq and Operating Permit requirements under Title V of the CAA, 42 U.S.C. §§ 7661 et seq.

I. STATUTORY AND REGULATORY AUTHORITIES

A. <u>New Source Performance Standards</u>

1. Under Section 111 of the Act, 42 U.S.C. § 7411, the Administrator promulgated the New Source Performance Standards (NSPS) General Provisions, at 40 C.F.R. Part 60, Subpart A, and the "Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978," codified at 40 C.F.R Part 60, Subpart Da.

2. Section 111(e) of the Act, 42 U.S.C. § 7411(e), prohibits the operation of any new source in violation of an NSPS applicable to such source. Thus, a violation of an NSPS is a violation of Section 111(e) of the Act.

3. Subpart Da applies to each electric utility steam generating unit capable of combusting more than 73 megawatts (250 million British thermal units (MMBtu) per hour) heat input of fossil fuel (either alone or in combination with any other fuel) for which construction is commenced, modification, or reconstruction is commenced after September 18, 1978. 40 C.F.R § 60.40Da(a).

4. 40. C.F.R. § 60.14(a) provides that, except as provided in 40 C.F.R. § 60.14(e) and (f), "...any physical or operational change to an existing facility which results in an increase in the emission rate to the atmosphere of any pollutant to which a standard applies shall be considered a modification within the meaning of section 111 of the [CAA]. Upon modification, an existing facility shall become an affected facility for each pollutant to which a standard applies and for which there is an increase in the emission rate to the atmosphere." Following promulgation in July 1992 no physical change, or change in the method of operation, is treated as a modification of an existing electric utility steam generating unit if such change does not increase the maximum hourly emissions of any pollutant to which a standard applies above the maximum hourly emissions achievable at that unit during the 5 years prior to the change. 40 C.F.R. § 60.14(h).

5. 40 C.F.R. § 60.43Da(a)(1) provides that "no owner or operator subject to the provisions of [40 C.F.R. Part 60, Subpart Da] shall cause to be discharged into the atmosphere from any affected facility which combusts solid fuel or solid-derived fuel and for which construction, reconstruction, or modification commenced before or on February 28, 2005 except

as provided under subparagraphs (c), (d), (f) or (h) of this section, any gases that contain SO_2 in excess of: (1) ...1.20 lb/MMBtu ...heat input and 10 percent of the potential combustion concentration (90 percent reduction); or (2) 30 percent of the potential combustion concentration (70 percent reduction), when emissions are less than ...0.60 lb/MMBtu heat input."

B. Title V Requirements

6. 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 CAA. 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.

7. 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.

8. 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. 42 U.S.C. § 7661c(a).

9. 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 OAR 340-218-0010(1).

10. 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 OAR 340-200-0020.

11. 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 340-218-0120(2)(a).

12. 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 340-218-0040(1)(a) and (c).

13. 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 OAR 340-218-0040(1)(b).

14. EPA promulgated interim approval of Oregon's Title V program on December 2, 1994 and full approval on September 28, 1995. See 40 C.F.R. Part 70, Appendix A. Oregon's Title V program became effective on that date. See 60 Fed. Reg. 50106.

15. Oregon's regulations governing the Title V permitting program are codified at OAR Ch. 340-218, and are federally enforceable pursuant to Section 113(a)(3).

II. FACTUAL BACKGROUND

16. PGE is an Oregon corporation, authorized to do business in the State of Oregon.

17. PGE is a "person," as that term is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

18. The PGE Boardman Facility is located at 73334 Tower Road, Boardman, Oregon; and has a coal-fired boiler (Boiler) with a heat input greater than 250 million Btu per hour.

19. At all times relevant to this Notice, PGE was an owner and the operator of the PGE Boardman Facility.

20. The Boiler at the PGE Boardman Facility constitutes an "electric utility steam generating unit," as defined at 40 C.F.R. § 60.41Da.

21. Between May 16, 1998 and July 6, 1998 PGE made various physical changes or changes in the method of operation at the Boiler. These changes include, but are not limited to, the addition of tubing to the economizer and superheater sections of the boiler and the addition of soot blowing equipment.

22. Between April 20, 2004 and July 27, 2004 PGE made various physical changes or changes in the method of operation at the Boiler. These changes include, but are not limited to, the addition of tubing to the reheater section of the boiler and making associated modifications to the high pressure/intermediate pressure steam turbine.

III. NOTICE AND FINDING OF VIOLATIONS

A. Violations of the Standards of Performance for Electric Utility Steam Generating Units

23. The physical and/or operational changes identified in Paragraph 21 above resulted in an increase in the emission rate to the atmosphere (in terms of lbs/hr) of a pollutant regulated by 40 C.F.R. Part 60, Subpart Da.

24. In the alternative, the physical and/or operational changes identified in the above Paragraph 22 resulted in an increase in the emission rate to the atmosphere (in terms of lbs/hr) of a pollutant regulated by 40 C.F.R. Part 60, Subpart Da

25. As such, the Boiler was "modified" within the meaning of 40 C.F.R. § 60.14 and Section 111(a)(4) of the CAA, 42 U.S.C. § 7411(a)(4), after September 18, 1978 and before or on February 28, 2005, and is therefore an affected facility subject to 40 C.F.R. Part 60, Subpart Da.

26. The Boiler has no controls to reduce emissions of SO_2.

27. The Boiler is therefore operating in violation of the SO_2 emissions standard at 40 C.F.R. § 60.43a(a)(1) and Section 111(e) of the Act.

B. <u>Violations of the Title V Provisions</u>

28. PGE failed to submit a timely, accurate, and complete Title V permit application for the PGE Boardman Facility with information concerning all applicable requirements, including, but not limited to, the requirement of 40 C.F.R. § 60.43a(a)(1), and also failed to supplement or correct the Title V permit application 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. Part 70, including, but not limited to, 40 C.F.R. §§ 70.1(b), 70.5, 70.6, and 70.7(b); and the Oregon Title V provisions at OAR 340-218-0010(1), 340-200-0020, 340-218-0120(2)(a), 340-218-0040(1)(a) and (c), and 340-218-0040(1)(b).

IV. ENFORCEMENT

29. Section 113 of the CAA, 42 U.S.C. § 7413, authorizes EPA to take any of the following actions whenever, on the basis of available information, EPA finds that any person has violated or is in violation of any requirement of the CAA--

a. Issue an order requiring such person to comply with the requirements of the CAA;

b. Issue an administrative penalty order in accordance with Section 113(d) of the CAA, 42 U.S.C. § 7413(d), for civil administrative penalties of up to $25,000 per day of violation;

c. Bring a civil action in accordance with Section 113(b) of the CAA, 42 U.S.C. § 7413(b), for injunctive relief and/or civil penalties of not more than $25,000 per day for each violation.

30. Section 113(c) of the CAA, 42 U.S.C. § 7413(c), authorizes EPA to request the Attorney General to commence a criminal action for knowing violations of the CAA.

31. Under Section 306 of the CAA, the regulations promulgated there under (40 C.F.R. Part 32), and Executive Order 11738, facilities to be used in federal contracts, grants, and loans must be in full compliance with the CAA and all regulations promulgated pursuant to it. Violation of the CAA may result in the subject facility being declared ineligible for participation in any federal contract, grant, or loan.

32. Section 120 of the CAA, 42 U.S.C. § 7420, authorizes EPA to assess penalties for noncompliance aimed at recovering the economic benefits which the violator has received by operating the facility out of compliance.

33. 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.

V. NOTICE OF CONFERENCE OPPORTUNITY

34. Respondent may request a conference with EPA to discuss the substance of this NOV. Please contact John Keenan, EPA Region 10, (206-553-1817) within ten days of receipt of this NOV if you wish to schedule a conference.

35. This NOV does not waive or limit EPA's right to any remedy available to it under the CAA.

36. This NOV shall become effective immediately upon issuance.

Issued this 28th day of September, 2010.

Edward J. Kowalski, Director
Office of Compliance and Enforcement