UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Office of Enforcement and Compliance Assurance

IN THE MATTER OF:	)	
	)	
Southern Indiana Gas	)	
and Electric Company	)	Notice of Violation
	)	
Proceedings Pursuant to	)	EPA-CAA-2000-HQ-0003
Section 113(a) of the	)	
Clean Air Act,	)	
42 U.S.C. § 7413(a)	)	
	)	

NOTICE OF VIOLATION

This Notice of Violation ("Notice") is issued to Southern Indiana Gas and Electric Company ("SIGECO") for violations of the Clean Air Act, as amended ("Act"), 42 U.S.C. §§ 7401-7671q, at SIGECO's F.B. Culley Station coal-fired electric generating plant in Yankeetown, Warrick County, Indiana ("Culley Station"). SIGECO has embarked on a program of modifications intended to extend the useful life, regaining lost generating capacity, and/or increase capacity at their coal-fired power plants.

Commencing at various times since 1977 and continuing to today, SIGECO modified and operated certain boiler units at Culley Station without obtaining Prevention of Significant Deterioration ("PSD") permits authorizing construction of physical modifications to the units and operation of the modified units, as required by the PSD provisions set out in Sections 160 through 169B of the Act, 42 U.S.C. §§ 7470-7492 and 40 C.F.R. § 52.21, as incorporated into the Indiana State Implementation Plan (SIP) pursuant to 40 C.F.R. § 52.793. In addition, for each of these physical modifications at Culley Station, SIGECO operated the modified units without installing pollution control equipment required by the Act and the Indiana SIP. These violations of the PSD requirements have resulted in the release of massive amounts of sulfur dioxide ("SO_2"), nitrogen oxides ("NO_x") and particulate matter ("PM") into the environment. Until these violations are corrected, SIGECO will continue to release massive amounts of illegal SO_2, NO_x, and/or PM into the environment.

This Notice is issued pursuant to Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1). Section 113(a)(1) 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 Notice has been delegated to the Director, Air Enforcement Division, EPA Office of Enforcement and Compliance Assurance.

STATUTORY AND REGULATORY BACKGROUND

1. When the Clean Air 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 a 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 Clean Air Act require preconstruction review and permitting for modifications of stationary sources. Pursuant to applicable regulations, if a major stationary source is planning upon making a major modification, then that source must obtain either a 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. If a major stationary source is planning upon making a modification that is not major, it must obtain a general, or "minor" NSR permit regardless of its location. To obtain the required permit, the source must agree to put on the Best Available Control Technology ("BACT") for an attainment pollutant or achieve the Lowest Achieveable Emission Rate ("LAER") in a nonattainment area, or, in the case of a modification that is not major, must meet the emission limit called for under the applicable minor NSR program.

3. The statutory and regulatory requirements for PSD and the Indiana SIP prohibit construction or operation of a major modification of 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. Section 110(a)(2)(C) of the Act and the Indiana SIP prohibit commencing

construction or modification of any source or facility without first applying for and obtaining a construction permit ("minor NSR permit"). See APC Regulation 19, approved Feb. 16, 1982, 40 C.F.R. § 52.770(c)(24) and 326 Indiana Administrative Code (IAC) 2-1 and 2-3, approved Oct. 7, 1994, 40 C.F.R. § 52.770(c)(94).

5. The PSD provisions in paragraph 3 and 4 above are federally enforceable pursuant to Sections 110 and 113 of the Act, 42 U.S.C. §§ 7410 and 7413.

FACTUAL BACKGROUND

6. SIGECO owns and operates the F.B. Culley Station ("Culley Station") coal-fired electric generation plant in Yankeetown, Warrick County, Indiana. Culley Station generates electricity from three steam-generating boilers which are designated Unit 1, Unit 2 and Unit 3.

7. At all times since 1990, Culley Station was located in an area that had been classified as attainment or unclassifiable for one or more of the following pollutants: Ozone, NO_2, SO_2, PM 10, and PM.

8. Culley Station emitted or had the potential to emit at least 100 tons per year of NO_x, SO_2 and/or PM and is a major stationary source under the Act.

VIOLATIONS

9. On numerous occasions between 1979 and the date of this Notice, SIGECO made modifications at Culley Station as defined by the Indiana SIP. These modifications included, but are not limited to, the following individual modifications or projects: (1) replacement of numerous components of Unit 3 in 1997, including the tubes in the secondary superheater outlet bank, the reheater outlet bank, and overhauling the turbine, generator, excitor, boiler feed pump turbine, and boiler feed pump; (2) replacement of the economizer bank of Unit 3 in 1994; (3) replacement of the economizer of Unit 1 in 1991; (4) replacement of the outlet section of the secondary superheater of Unit 2 in 1992; and (5) replacement of feedwater heater of Unit 3 in 1991.

10. For each of the modifications that occurred at Culley Stations, SIGECO failed to obtain a PSD permit pursuant to 42 U.S.C. §§ 7470-7492, 40 C.F.R. § 52.21 or a minor NSR permit pursuant to The Indiana SIP, APC 19 and 326 IAC 2-1. In addition, for modifications after 1992, no information was provided to the permitting agency of actual emissions after the modification, as required by 40 C.F.R. § 52.21(b)(21)(v) and the Indiana SIP.

11. None of these modifications at Culley Station fall within the "routine maintenance, repair and replacement" exemption found at 40 C.F.R. § 52.21(b)(2)(iii) because each change is an expensive capital expenditure performed infrequently at the plant that constituted the replacement and/or redesign of a boiler component with a long useful life. In each instance, the change was performed to increase capacity, regain lost capacity, and/or extend the life of the unit. In many instances, the original component was replaced with a component that was substantially redesigned in a manner that increased emissions. That the "routine maintenance, repair and replacement" exemption does not apply to such capital expenditures was known to the utility industry since at least 1988 when EPA issued a widely publicized applicability determination regarding utility modifications at a Wisconsin Electric Power Co. ("WEPCO") facility. EPA's interpretation of this exemption was upheld by the court of appeals in 1990. Wisconsin Electric Power Co. v. Reilly, 893 F.2d 901 (7th Cir. 1990).

12. None of the modifications at Culley Station fall within the exemption found at 40 C.F.R. § 52.21(b)(2)(iii)(f) for an "increase in the hours of operation or in the production rate." This exemption is limited to stand-alone increases in operating hours or production rates, not where such increases follow or are otherwise linked to construction activity. That the hours of operation/rates of production exemption does not apply where construction activity is at issue was known to the utility industry since at least 1988 when EPA issued a widely publicized applicability determination regarding utility modifications at a Wisconsin Electric Power Co. ("WEPCO") facility. EPA's interpretation of this exemption was upheld twice by the court of appeals, in 1989 and in 1990. Puerto Rican Cement Co. v. EPA, 889 F.2d 292 (1st Cir. 1989); Wisconsin Electric Power Co. v. Reilly, 893 F.2d 901 (7th Cir. 1990).

13. None of these modifications at Culley Station fall within the "demand growth" exemption found at 40 C.F.R. § 52.21(b)(33)(ii) because for each modification a physical change was performed which resulted in the emissions increase.

14. Each of these modifications resulted in a net emissions increase from Culley Station of NO_x, SO_2 and/or PM. See 40 C.F.R. § 52.21(b)(3)(I).

15. Therefore, SIGECO violated and continues to violate the PSD requirements found at 42 U.S.C. §§ 7470-7492, 40 C.F.R. § 52.21 and the Indiana SIP, and the minor NSR provisions of the Indiana SIP, APC 19 and 326 IAC 2-1, by constructing and operating modifications at Culley Station without the necessary permit.

16. Each of these violations exists from the date of start of construction of the modification until the time that SIGECO obtains the appropriate PSD permit and operates the necessary pollution control equipment to satisfy the requirements of 42 U.S.C. §§ 7470-7492, 40 C.F.R. § 52.21 and the Indiana 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 before January 30, 1997, and no more than $27,500 per day for each violation after January 30, 1997.

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 it may have taken or proposes to take to achieve compliance. Respondent has a right to be represented by counsel. A request for a conference must be made within 10 days of receipt of this Notice, and the request for a conference or other inquiries concerning the Notice should be make in writing to:

Gregory Jaffe
U.S. Environmental Protection Agency
Air Enforcement Division
401 M Street, S.W. 20460
Mail Code 2242A
202-564-1309

11/2/99
Date

Bruce C. Buckheit

Bruce C. Buckheit, Director
Air Enforcement Division
Office of Enforcement
and Compliance Assurance