



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

In Reply Refer To: 3AP12

MAY 01 2000

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Norman Askew  
President-CEO  
Virginia Electric and Power Company, Incorporated  
P.O. Box 23261  
701 East Cary Street  
Richmond, Virginia 23219

Re: Notice of Violation III-00-003-WV Issued to Mount Storm  
Electric Generating Station Plant Identification # 54-023-00003

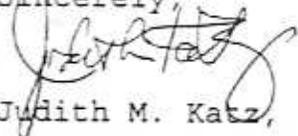
Dear Mr. Askew:

The United States Environmental Protection Agency (EPA) hereby informs Virginia Electric and Power Company by the attached Notice of Violation, that it is operating and has operated its Plant located in Mount Storm, West Virginia in violation of applicable federally enforceable air pollution control requirements.

EPA has also sent a copy of this Notice of Violation to: Skipp Kropp, Chief, Office of Air Quality, West Virginia Department of Environmental Protection (WVDEP).

If you have any questions regarding this Notice, please contact Richard Killian at (215) 814-2159.

Sincerely,

  
Judith M. Katz, Director  
Air Protection Division

Enclosure

cc: Skipp Kropp, Chief, Office of Air Quality, West Virginia  
Department of Environmental Quality

Customer Service Hotline: 1-800-438-2474

3VEP 011855

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region III  
1650 Arch Street  
Philadelphia, PA 19103

IN THE MATTER OF: )  
Virginia Electric and Power Company ) **Notice of Violation**  
 ) **III-00-003-WV**  
 )  
 )  
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 ( "Notice" ) is issued to Virginia Electric and Power Company (referred to herein as "VEPCo") for violations of the Clean Air Act ("Act"), 42 U.S.C. §§ 7401-7671q and §§ 7501-7515, at the Mount Storm Power Plant, a coal-fired power plant identified below. VEPCo has embarked on a program of modifications intended to extend the useful life, regain lost generating capacity and/or increase capacity at the Mount Storm coal-fired power plant.

Commencing at various times since 1977 and continuing to today, VEPCo has modified and operated the Mount Storm Power Plant identified below without obtaining New Source Review ("NSR") permits authorizing the construction and/or operation of physical modifications of its boiler units as required by the Act. In addition, for each physical modification at this power plant, VEPCo operated these modifications without installing pollution control equipment required by the Act. These violations of the Act and the State Implementation Plan ("SIP") of West Virginia resulted in the release of massive amounts of sulfur dioxide ("SO<sub>2</sub>"), nitrogen oxide ("NO<sub>x</sub>"), and particulate matter ("PM" ) into the environment. Until these violations are corrected, VEPCo will continue to release illegal SO<sub>2</sub>, NO<sub>x</sub>, and PM into the environment .

This notice is issued pursuant to Section 113 (a) (1) of the Act, as

amended, 42 U.S.C. §§ 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 notice has been delegated to the Division Director, Air Protection Division, United States Environmental Protection Agency, Region III.

### STATUTORY AND REGULATORY BACKGROUND

1. When the Clean Air Act was passed in 1970, Congress exempted existing facilities, including the coal-fired power plants that are the subject of this Notice, 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 Clean Air Act require preconstruction review and permitting for modifications of stationary sources. See 42 U.S.C. §§ 7470-7492 and 7501-7575, respectively. 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 Best Available Control Technology ( "BACT" ) for an attainment pollutant or achieve Lowest Achievable Emission Rates ("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
3. Pursuant to Part C of the Act, the SIP of West Virginia requires that no construction or operation of a major modification of a major stationary source occur in an area designated as attainment without first obtaining a permit under the Prevention of Significant Deterioration ("PSD") regulations. See 45 C.S.R. § 14 and 40 C.F.R. § 52.21. The West Virginia

PSD program is part of the West Virginia SIP and was approved by U. S. EPA on April 11, 1986. 51 Fed. Reg. 12517 (April 11, 1986).

4. Pursuant to Part D of the Act, the West Virginia SIP requires that no construction of a major modification of a major stationary source shall occur in an area designated as nonattainment without first obtaining a permit under 45 C.S.R. § 19. U.S. EPA approved West Virginia's Nonattainment NSR SIP Rules on July 2, 1985. 50 Fed. Reg. 27247 (July 2, 1985). ~ 40 C.F.R. § 52.2520(c) (22) (1996).
5. Pursuant to Section 110 (a) (2) (C) of the Act, the West Virginia SIP requires that no person shall commence construction or modification of any source or facility without first applying for and obtaining a construction permit ("minor NSR"). ~ 45 C.S.R. § 13-4.
6. The SIP provisions identified in this section are all federally enforceable pursuant to Sections 110 and 113 of the Act.

### **FACTUAL BACKGROUND**

7. VEPCo is the owner and operator of the Mount Storm Power Plant that is the subject of this Notice. VEPCo is the wholly owned subsidiary of Dominion Resources Inc .
8. The Mount Storm Power Plant is a fossil fuel-fired electric utility steam generating plant located in Mount Storm, Grant County, West Virginia. The plant consists of three boiler units with 1,654 megawatt ( "MW" ) nominal generating capacity. The initial startup dates for the Mount Storm steam generating units were 1965, 1966 and 1973 for Units 1, 2, and 3, respectively.
9. The Mount Storm Power Plant is located in an area that has the following attainment classifications from 1980 to the present:

For NO <sub>2</sub> :	1980-2000: Attainment
For SO <sub>2</sub> :	1980-2000: Attainment
For PM:	1980-2000: Attainment
For O <sub>3</sub> :	1980-2000: Attainment
10. Mount Storm Power Plant emits or has the potential to emit at least 100 tons per year of NO<sub>x</sub>, SO<sub>2</sub>, and PM and is a major emitting stationary source under the Act.

### FINDING OF VIOLATIONS

11. Between 1979 and the date of this Notice, VEPCo made "modifications" as defined by 40 C.F.R. § 52.21 and the West Virginia SIP, 45 C.S.R. § 14- 2 .27, at the Mount Storm Power Plant. These modifications included, but are not limited to, the following individual modifications or projects:
  - (1) replaced the economizer at unit 1 in approximately 1988;
  - (2) replaced the economizer at unit 2 in approximately 1989;
  - (3) replaced the economizer at unit 3 in approximately 1992;
  - (4) conversion from a forced draft system on unit 1 to a balanced draft system in approximately 1983; and
  - (5) conversion from a forced draft system on unit 2 to a balanced draft system in approximately 1983.
  
12. For each of the modifications listed above that occurred at the Mount Storm Power Plant, VEPCo failed to obtain a PSD permit pursuant to 45 C.S.R. § 14-6.1. and 40 C.F .R. § 52.21, a nonattainment NSR permit pursuant to 45 C.S.R. § 19-3.5., or a minor NSR permit pursuant to 45 C.S.R. § 13-4. For each of the modifications listed above that occurred at the Mount Storm Power Plant, VEPCo failed to comply with the other requirements of the West Virginia SIP in 45 C.S.R. §§ 13, 14, and 19 and 40 C.F .R. § 52.21. 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 for modifications after December 23, 1996 as required by 45 C.S.R. § 14.
  
13. All of the modifications at the Mount Storm Power Plant do not fall within the "routine maintenance, repair and replacement" exemption found at 45 C.S.R, § 14-2.27.a and at 40 C.F.R. § 52.21(b) (2). Each of these changes was 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 many instances, the replacement component was substantially redesigned in such a way that it resulted in increased capacity, regained lost capacity, and/or extended the life of the unit. 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 (7<sup>th</sup> Cir. 1990).

14. All of the modifications at the Mount Storm Power Plant do not fall within the exemption found at 45 C.S.R. § 14-2.27(f) and (g) and 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 (1<sup>st</sup> Cir. 1989); Wisconsin Electric Power Co. v. Reilly, 893 F.2d 901 (7<sup>th</sup> Cir. 1990).
15. All of the modifications at the Mount Storm Power Plant do not fall within the "demand growth" exemption found at 40 C.F.R. §52.21(b) (33) (ii) and 45 C.S.R. § 14-2.44.b, as approved by EPA as part of the West Virginia SIP on December 23, 1996, because for each modification, a physical change was performed which resulted in an emissions increase.
16. Each of the modifications resulted in a significant net increase in emissions from the Mount Storm Power Plant for NO<sub>x</sub>, SO<sub>2</sub> and/or PM as those terms are defined at 45 C.S.R. §§ 14-2.34 and 14-2.46 and at 40 C.F.R. § 52.21(b) (3) and (23).
17. Therefore, VEPCo violated and continues to violate 40 C.F.R. § 52.21, 45 C.S.R. § 14-6, and 45 C.S.R. § 13-4 by constructing and operating modifications at the Mount Storm Power Plant without the necessary permits.
18. Each of these violations exists from the date of start of construction of the modification and continues until the appropriate permit is obtained and the necessary pollution control equipment is operated as required by 40 C.F.R. § 52.21 and the West Virginia 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 Notice, 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 on or after January 30, 1997.

### **OPPORTUNITY FOR CONFERENCE**

Respondent may, upon request, confer with 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 made in writing to:

Gregory Jaffe  
Senior Counsel  
Air Enforcement Division  
U. S .Environmental Protection Agency  
401 M. Street, SW.  
Washington, D.C. 20460  
Mail Code -2242A  
(202) 564-1309

---

Date

---

Judith M. Katz, Director  
Air Protection Division  
U.S. EPA, Region III