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**USEPA FINDS THE USDOE FMPC IN VIOLATION OF THE NATIONAL
EMISSIONS STANDARDS FOR HAZARDOUS AIR POLLUTANTS SECTIONS
112 AND 114 OF THE CLEAN AIR ACT**

02/23/89

**USEPA
7
LETTER**

DOE-FMPC

5602



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
230 SOUTH DEARBORN ST.
CHICAGO, ILLINOIS 60604

REPLY TO THE ATTENTION OF:

23 FEB 1989

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. James A. Reafsnyder
Site Manager
Feed Materials Production Center
United States Department of Energy
7400 Willey Road
Fernald, Ohio 45030

Dear Mr. Reafsnyder:

You are hereby notified that the United States Environmental Protection Agency (U.S. EPA) finds the United States Department of Energy (U.S. DOE), Feed Materials Production Center, to be in violation of the National Emission Standards for Hazardous Air Pollutants promulgated under Sections 112 and 114 of the Clean Air Act, as amended, 42 U.S.C. §§7412 and 7414.

U.S. EPA's enforcement authority is found in Section 113 of the Act. U.S. EPA is not required to send a notice to a source found in violation of Sections 112 and 114. However, we are sending you the enclosed Finding to afford you an opportunity for a conference to discuss the violations which are the subject of this Finding.

Please contact Peter B. Spyropoulos, Chief, Compliance Section II, Air Compliance Branch, (312) 353-2086 to request a conference. Since these violations involve emissions of a hazardous air pollutant, a request for a specific conference date should be made as soon as possible, but in any event, no later than ten (10) days from receipt of this Finding. Any conference must be held within twenty (20) days of receipt of this Finding.

Sincerely yours,

[Handwritten signature of David Kee]

David Kee, Director
Air and Radiation Division (5AC-26)

Enclosure

Date Rec'd MAR 06 1989
Log C-1148
File 5472.4
Library

Forwarded to G. Fowler 3/27/89/cns

cc: Patricia P. Walling, Chief
Division of Air Pollution Control
Ohio Environmental Protection Agency

Charles E. Schumann, Director
Southwestern Ohio Air Pollution Control Agency

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

In the Matter of:)	
United States Department of Energy)	
Feed Materials Production Center)	
Fernald, Ohio)	Finding of Violation
)	EPA-5-89-A-31
Proceeding Pursuant to the)	
Clean Air Act, as amended)	
42 U.S.C. §7401)	
)	

FINDING OF VIOLATION

The United States Department of Energy (U.S. DOE), owner of the Feed Materials Production Center, is hereby notified that pursuant to the Clean Air Act (Act), as amended, 42 U.S.C. §7401 et seq., the Administrator of the United States Environmental Protection Agency (U.S. EPA), by authority duly delegated to the undersigned, finds that U.S. DOE is in violation of Section 112(c)(1) of the Act, 42 U.S.C. §7412(c)(1), Section 114(a)(1) of the Act, 42 U.S.C. §7414(a)(1), and regulations promulgated thereunder setting forth the General Provisions of the National Emission Standards for Hazardous Air Pollutants, 40 C.F.R. §61.01 et seq.

REGULATORY BACKGROUND

1. Section 112(c)(1)(B) of the Act and 40 C.F.R. §61.05(c) prohibit any owner or operator from operating any subject stationary source in violation of regulations promulgated under Section 112 of the Act. Said regulations are called National Emission Standards for Hazardous Air Pollutants (NESHAPs).
2. Section 112(c)(1)(B) and Section 114(a)(1) of the Act and 40 C.F.R. §61.05(d) prohibit any owner or operator subject to any NESHAP from failing to report as required.
3. Section 112(c)(1)(A) of the Act and 40 C.F.R. §61.05(a) prohibit any owner or operator from constructing or modifying any stationary source subject to a NESHAP without first obtaining written approval from the Administrator in accordance with the General Provisions of the NESHAPs. 40 C.F.R. §61.01 et seq.
4. On February 5, 1985, the Administrator, in accordance with Sections 112 and 114 of the Act, promulgated the National Emission Standard for Radionuclide Emissions from Department of Energy Facilities (radionuclides standard). 40 C.F.R. §61.90 et seq.
5. Radionuclides is regulated as a hazardous air pollutant under Section 112 of the Act because breathing radionuclides can cause cancer and mutations.

6. On April 6, 1973, the Administrator, in accordance with Sections 112 and 114 of the Act, promulgated regulations pertaining to applications to construct or modify any NESHAP source. These regulations were subsequently amended and repromulgated on November 7, 1985. They are found in the General Provisions of the NESHAPS and apply to radionuclides, which has been designated as a hazardous air pollutant. 40 C.F.R. §§61.06 and 61.07.

7. Definitions. The following definitions apply to all NESHAPS:

"Commence" means that an owner or operator has undertaken a continuous program of construction or modification or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or modification. 40 C.F.R. §61.02.

"Construction" means fabrication, erection, or installation of an affected facility. 40 C.F.R. §61.02.

"Effective date" means the date of promulgation in the Federal Register of an applicable standard or other regulation under this part. 40 C.F.R. §61.02.

"Existing source" means any stationary source which is not a new source. 40 C.F.R. §61.02.

"Modification" means any physical or operational change to a stationary source which results in an increase in the rate of emission to the atmosphere of a hazardous air pollutant. 40 C.F.R. §61.15.

"New source" means any stationary source, the construction or modification of which is commenced after the publication in the Federal Register of proposed national emission standards for hazardous air pollutants which will be applicable to such source. 40 C.F.R. §61.02.

"Owner or operator" means any person who owns, leases, operates, controls, or supervises a stationary source. 40 C.F.R. §61.02.

"Startup" means the setting in operation of a stationary source for any purpose. 40 C.F.R. §61.02.

"Stationary Source" means any building, structure, facility, or installation which emits or may emit any air pollutant which has been designated as hazardous by the Administrator. 40 C.F.R. §61.02.

8. Application for Approval of Construction or Modification.
40 C.F.R. §61.07(a) states that the owner or operator shall submit to the Administrator an application for approval of the construction of any new source subject to a NESHAP or modification of any existing source subject to a NESHAP.

9. Timeliness of an Application. 40 C.F.R. §61.07(a) states that the application for approval of construction or modification shall be submitted before the construction or modification is planned to commence, or within 30 days after the effective date if the construction or modification had commenced before the effective date and initial startup has not occurred.

SPECIFIC FINDINGS

1. The United States Department of Energy (U.S. DOE) is the owner of the Feed Materials Production Center (FMPC), which is a contract operated federal facility for the production of highly pure uranium metal. FMPC is located at 7400 Willey Road, Fernald, Ohio, with program direction being administered through the Oak Ridge, Tennessee office of U.S. DOE. FMPC is managed by the Westinghouse Materials Company of Ohio under contract with U.S. DOE.

2. The entire FMPC facility is an existing source, as defined in 40 C.F.R. §61.02.

3. On August 10, 1988, U.S. DOE submitted 14 applications for a determination by U.S. EPA under 40 C.F.R. §61.06 as to whether equipment to be installed at FMPC constituted modifications of the source (FMPC), as defined in 40 C.F.R. §61.15. U.S. DOE requested that if U.S. EPA determined the installations to be modifications, that the applications should then be considered applications to modify submitted pursuant to 40 C.F.R. §61.07.

4. On December 23, 1988, U.S. EPA informed U.S. DOE by written letter that the submitted data indicated that the 14 installations would result in an increase in the rate of emission to the atmosphere of radionuclides, and therefore constituted modifications. U.S. EPA also denied approval of these modifications, because the submitted data was deficient and incomplete, and therefore did not indicate that the modifications would not cause emissions in violation of the radionuclides standard. 40 C.F.R. §61.08.

5. In the August 10, 1988, submittal, U.S. DOE reported the date of installation and startup of each modification. The information is summarized below:

<u>Process Description</u>	<u>Identification No.</u>	<u>Date of Installation</u>	<u>Date of Startup</u>
Ingot O.D. Lathe	9-016	Never Commenced	
Plasma Spray Crucible Coating Station	5-086	December 1985	Not operated
Crucible Grit Blaster	5-085	December 1985	Not operated
West Wagner Cold Saw	5-084	March 1986	Not operated

<u>Process Description</u>	<u>Identification No.</u>	<u>Date of Installation</u>	<u>Date of Startup</u>
Graphite Band Saw	5-093	July 1986	Not operated
W. Mold Reconditioning Booth	5-080	August 1986	Not operated
W. Melt Crucible Lid Cleaner	5-083	August 1986	Not operated
Flat Ingot Model 4 Milling Machine	6-064	June 1986	July 1986
Flat Ingot Model 4A Milling Machine	6-001	March 1985	April 1985
Flat Ingot Model 4B Milling Machine	6-002	March 1985	April 1985
Flat Ingot Model 425-20 Milling Machine	6-060	October 1985	November 1985
Flat Ingot No. 6 Milling Machine	6-061	July 1985	August 1985
Flat Ingot K&T A Milling Machine	6-062	January 1986	February 1986
Flat Ingot K&T B Milling Machine	6-063	January 1986	February 1986

6. The applications to modify for all the above listed processes except the Ingot O.D. Lathe, #9-016 (13 out of 14 applications), were submitted after the modifications were planned to commence or later than 30 days after the February 5, 1985 effective date of the radionuclides standard for modifications that may have commenced before the effective date but for which initial startup had not occurred. The failure to submit timely applications to modify constitutes violations of 40 C.F.R. §61.07(a).

7. On November 23, 1988, U.S. DOE submitted an application to modify FMPC by installing a new Plant 6 Sump and Waste Treatment System.

8. On December 23, 1988, U.S. EPA informed U.S. DOE that the Plant 6 Sump and Waste Treatment equipment installation was a modification, since the submitted data indicated that the installation would result in an increase in the rate of emission to the atmosphere of radionuclides. On January 23, 1989, U.S. EPA informed U.S. DOE in writing of U.S. EPA's intention to deny approval of this modification because the submitted

data was deficient and incomplete, and therefore did not indicate that the modification would not cause emissions in violation of the radionuclides standard. 40 C.F.R. §61.08.

9. According to U.S. DOE's information submitted on November 23, 1988, the Plant 6 Sump and Waste Treatment System was installed in 1987, which means that the application to modify was submitted after the modification was planned to commence or later than 30 days after the February 5, 1985 effective date if the modification had commenced before the effective date of the radionuclides standard. The failure to submit a timely application to modify constitutes a violation of 40 C.F.R. §61.07(a).

NOTICE OF VIOLATION

The Administrator of U.S. EPA, by authority duly delegated to the undersigned, notifies the United States Department of Energy, Feed Materials Production Center, that it is in violation of the National Emission Standards for Hazardous Air Pollutants, as set forth in this Finding of Violation. Notification is also being given to the State of Ohio.

23 FEB 1989

Date _____



David Kee, Director
Air and Radiation Division (5AC-26)