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Joseph J. Pricener  
Attorney



April 1, 2014

Via Certified Mail

Ms. Katie Koster  
MDEQ- Air Quality Division  
Detroit Field Office  
3058 West Grand Blvd, Suite 2-300  
Detroit, MI 48202

Re: Response to Violation Notice dated March 13, 2014  
United States Steel Corporation  
SRN: A7809, Wayne County

Dear Ms. Koster:

U. S. Steel is in receipt of the Department's Violation Notice (VN) dated March 13, 2014 which alleges U. S. Steel installed two emergency generators in 2006 without obtaining a permit-to-install (PTI) in violation of R 336.1201(1). As further explained below, U. S. Steel maintains that a PTI was not necessary for the emergency generators and respectfully disagrees with the VN's assessment of the generators' maximum heat inputs as well as its assertion that R 336.1282(b) is not applicable to emergency generators. We also question the timeliness of the VN given the Department was notified of their installations via letter dated August 3, 2006 pursuant to the RICE MACT.

First, in regards to heat input, the VN alleges the maximum heat input values for each generator is 19.01 mm/BTU based on their maximum fuel consumption. At the outset, U. S. Steel questions the accuracy of the Department's maximum fuel consumption value of 137.5 gal/hr at 100 percent load. The engines' specification fuel consumption rates do not correspond to this value at any percentage load identified for the engines.

Even if accurate, U. S. Steel maintains its objection to the maximum fuel methodology as it is contrary to common industry and regulatory practice and leads to absurd results. Using this calculation methodology grossly overestimates the heat inputs of the units. This maximum fuel consumption scenario is highly unlikely and would only be temporary if it did occur. U. S. Steel asserts that instead of using maximum fuel consumption, the generators' heat inputs need to be calculated from their horsepower ratings as is traditionally done by industry and regulatory agencies alike.

Generators, and other internal combustion engines, are traditionally sized in terms of horsepower. In fact, the Department's own description of units in the Draft ROP is "Two 2,922 hp diesel emergency generators." U. S. Steel's position is also supported by federal regulations, specifically the RICE MACT at 40 CFR 63 Subpart ZZZZ, the applicability of which is based on the brake horsepower rating (as opposed to a theoretical, calculated fuel consumption rate) of an engine. The Department's guidance on Subpart ZZZZ published by the Office of Environmental Assistance in April 2011 further confirms this principle.

In regards to the applicability of R 336.1282(b), U. S. Steel maintains that the generators qualify for the exemption based on a plain reading of the rule. Put simply, the generators burn No. 2 fuel (diesel) to make electricity. The diesel fuel is not more than 40 percent sulfur by weight and the rated heat input capacity for each generator is by all calculations less than 20 mm/Btu per hour.

The Department asserts that U. S. Steel cannot claim the exemption in R 336.1282(b) because it has concluded the definition of "fuel burning equipment" excludes generators. Despite a thorough review of Michigan statutes, regulations, and case history, however, U. S. Steel was unable to locate a single instance where such a determination was published. The Department provided a letter, dated July 22, 1997 in which the Department states that generators are not fuel burning equipment. The letter is addressed to Edison Energy Service, and while it demonstrates that the Department's policy is not new, it does not further explain the Department's rationale nor does it put others on notice of its policy.

Per Executive Reorganization Order No. 2011-1, the Department is permitted to promulgate rules and carry out its functions as long as they are in accordance with Administrative Procedures Act of 1969 ("APA"). See MCLA 324.99921. The APA defines "rule" as "an agency regulation, statement, standard, policy, ruling or instruction of general applicability that implements or applies law enforced or administered by the agency...." MCLA 24.207. U. S. Steel recognizes that section 24.207 excludes interpretative statements from the definition of a rule provided, however, they do not have the force and effect of law. The APA further provides a rule is not valid unless processed in compliance with notice and hearing opportunities. See MCLA 24.243.

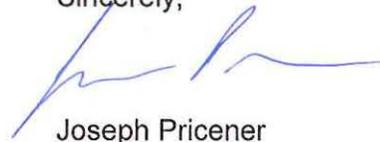
The Department's position that generators cannot be fuel burning equipment runs afoul of the APA and is therefore invalid. Clearly, it is a policy or an instruction of general applicability since it determines what type of equipment to which R 336.282(b) applies. Thus, by the Department's application of the policy in this instance, it is a rule by definition. It does not meet the exemption of an interpretative statement because it does indeed have the force and effect of law in that it dictates U. S. Steel's ability to claim the exemption thereby affecting our rights. U. S. Steel is bound by the agency's policy and, as stated before, there appears to have been no publication of the policy let alone a notice and hearing opportunity. Accordingly, the Department's policy is an invalid rule which cannot be implemented.

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In addition to the procedural flaws of the Department's policy, U. S. Steel questions its real-world implications. The generators are relatively minor units and used for emergency purposes only. They are certainly less emissive than other units expressly contemplated by Rule 336.282(b) such as boilers and furnaces. Yet, the Department' policy would seem to promote facilities to install more emissive units in order to qualify for the exemption.

In summary, U. S. Steel maintains that it did not violate R 336.1201(1) and requests that the VN be rescinded. We look forward to your response and please contact me should you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Joseph Pricener", with a long horizontal flourish extending to the right.

Joseph Pricener

cc: Jim Gray (USS)  
Alexis Piscitelli (USS)