



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

**MAR 13 2013**

REPLY TO THE ATTENTION OF:

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Skiles W. Boyd, Vice President  
Environmental Management & Resources  
DTE Energy  
One Energy Plaza  
Detroit, Michigan 48226-1279

RE: Notice and Finding of Violation issued to Detroit Edison and DTE Energy

Dear Mr. Boyd:

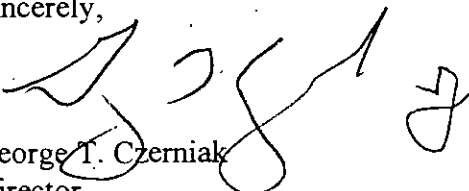
The U.S. Environmental Protection Agency is issuing the enclosed Notice of Violation and Finding of Violation (NOV/FOV) to Detroit Edison and DTE Energy (collectively DTE). This NOV/FOV is issued in accordance with Section 113(a) of the Clean Air Act (the Act), 42 U.S.C. § 7413(a). EPA previously issued NOV/FOVs to Detroit Edison and/or DTE on July 24, 2009 and June 4, 2010. Those prior notices and findings are incorporated by reference in this NOV/FOV.

EPA has determined that DTE is violating the Prevention of Significant Deterioration requirements, Section 165 of the Act, 42 U.S.C. § 7475, Non-attainment New Source Review, Sections 171-193 of the Act, 42 U.S.C. §§ 7501-7515, New Source Performance Standards, Section 111 of the Act, 42 U.S.C. § 7411, the Operating Permit requirements under Title V of the Act, 42 U.S.C. §§ 7661 – 7661e, and the Michigan State Implementation Plan (SIP) at its Belle River and Trenton Channel power plants. In addition, EPA is providing supplemental notice of violations previously noticed at the Belle River, Monroe, River Rouge, St. Clair, and Trenton Channel power plants.

EPA is offering you an opportunity to confer with us about the violations cited in the NOV/FOV. The conference will give you an opportunity to present information on the specific findings of violations, and the steps you will take to bring the facilities into compliance. Please plan for your technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference.

The EPA contact in this matter is Ethan Chatfield. You may call him at (312) 886-5112 to request a conference. You should make your request for a conference no later than 10 calendar days after you receive this letter, and we should hold any conference within 30 calendar days of your receipt of this letter.

Sincerely,



George T. Czerniak  
Director  
Air and Radiation Division

Enclosure:

cc: Michael J. Solo, Jr, Attorney  
DTE Energy  
One Energy Plaza  
Detroit, Michigan 48226-1279

F. William Brownell, Partner  
Hunton & Williams LLP  
2200 Pennsylvania Avenue, NW  
Washington, DC 20037

Mark B. Bierbower  
Hunton & Williams LLP  
2200 Pennsylvania Avenue, NW  
Washington, DC 20037

Thomas Hess, Unit Supervisor  
Compliance and Enforcement Section  
Michigan Department of Environmental Quality  
Air Quality Division  
P.O. Box 30260  
Lansing, Michigan 48909

Chris Ethridge, District Supervisor  
Michigan Department of Environmental Quality  
Southeast Michigan District Office  
27700 Donald Court  
Warren, Michigan 48092-2793

Jack Larsen, District Supervisor  
Michigan Department of Environmental Quality  
State Office Building, 4<sup>th</sup> Floor  
301 E. Louis B. Glick Highway  
Jackson, Michigan 49201

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

**IN THE MATTER OF:**

**DTE Energy Company &  
Detroit Edison Company  
Detroit, Michigan**

)  
) **Proceedings Pursuant to**  
) **Section 113(a)(1) and (a)(3) of the**  
) **Clean Air Act,**  
) **42 U.S.C. §7413(a)(1) and (a)(3)**  
)  
) **EPA-5-13-MI-07**  
)  
)  
)

**NOTICE AND FINDING OF VIOLATION**

The U.S. Environmental Protection Agency (EPA) is issuing this Notice and Finding of Violation (Notice) under Section 113(a)(1) of the Clean Air Act ("CAA" or the "Act"), 42 U.S.C. § 7413(a)(1). The authority to issue this Notice has been delegated to the Regional Administrator of the U.S. Environmental Protection Agency Region 5, and redelegated to the Director, Air and Radiation Division. EPA finds that DTE Energy Co. (DTE) and Detroit Edison Company (Detroit Edison) are violating the CAA, 42 U.S.C. §§ 7401 *et seq.*, at their Belle River, Monroe, River Rouge, St. Clair, and Trenton Channel power plants, as follows:

**STATUTORY AND REGULATORY BACKGROUND**

**Prevention of Significant Deterioration**

1. When the 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, 400 (D.C. Cir. 1979), "[t]he 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. Part C of Title I of the Act, 42 U.S.C. §§ 7470-7492, sets forth requirements for the prevention of significant deterioration of air quality in those areas designated as either attainment or unclassifiable for purposes of meeting the National Ambient Air Quality Standards (NAAQS). These requirements are designed to protect public health and welfare, to assure that economic growth will occur in a manner consistent with the preservation of existing clean air resources and to assure that any decision to permit increased air pollution is made only after careful evaluation of all

the consequences of such a decision and after public participation in the decision making process. These provisions are referred to herein as the "PSD program."

3. Pursuant to CAA Section 110, 42 U.S.C. § 7410, each State must adopt and submit to EPA for approval a State Implementation Plan (SIP) that includes, among other things, regulations to prevent the significant deterioration of air quality under CAA Sections 161-165, 42 U.S.C. §§ 7471-7475. Upon EPA approval, state SIP requirements are federally enforceable under CAA Section 113. 42 U.S.C. § 7413; 40 C.F.R. § 52.23.

4. A state may comply with Section 161 of the Act by having its own PSD regulations approved as part of its SIP by EPA, which must be at least as stringent as those set forth at 40 C.F.R. § 51.166. If a state does not have a PSD program that has been approved by EPA and incorporated into the SIP, the federal PSD regulations set forth at 40 C.F.R. § 52.21 shall be incorporated by reference into the SIP. 40 C.F.R. § 52.21(a).

5. EPA delegated the State of Michigan the authority to issue PSD permits using the federal PSD rules at 40 C.F.R. § 52.21 (via delegation letter dated September 26, 1988).

6. On September 16, 2008, EPA conditionally approved Michigan's PSD SIP provisions. 73 Fed. Reg. 53366. This approval included approval of provisions relevant to this proceeding. On March 25, 2010, EPA fully approved Michigan's PSD SIP provisions. 75 Fed. Reg. 14352. On September 27, 2010, and September 12, 2012, EPA approved revisions to Michigan's PSD SIP provisions. 75 Fed. Reg. 59083, and 77 Fed. Reg. 56124, respectively. The Michigan PSD SIP provisions are codified at Michigan Admin. Code R. 336.2801 to 336.2823. The Michigan SIP adopts by reference several sets of EPA regulations, including 40 C.F.R. § 52.21. Mich. Admin. Code R. 336.2801a.

7. Section 165(a) of the Act, 42 U.S.C. § 7475(a), among other things, prohibits the construction and operation of a "major emitting facility" in an attainment area unless a permit has been issued that comports with the requirements of Section 165 and the facility employs the Best Available Control Technology (BACT) for each pollutant subject to regulation under the Act that is emitted from the facility. Similarly, the Michigan SIP prohibits actual construction of a new source or modification of a major stationary source unless that source has obtained a permit and met several requirements, including the application of BACT. Mich. Admin. Code R. 336.2802(3), 336.2810(3) to 336.2818. Section 169(1) of the Act, 42 U.S.C. § 7479(1), designates fossil fuel fired steam electric plants of more than 250 million British thermal units (BTUs) per hour heat input and that emit or have the potential to emit 100 tons per year or more of any regulated pollutant to be "major emitting facilities." Under the PSD program, a "major stationary source" is defined to include fossil fueled steam electric generating plants of more than 250 million BTUs per hour heat input that emit, or have the potential to emit, 100 tons per year or more of any regulated air pollutant. 40 C.F.R. § 52.21(b)(1)(i)(a); Mich. Admin. Code R. 336.2801(cc)(i)(A).

8. Section 169(2)(c) of the Act, 42 U.S.C. § 7479(2)(C), defines "construction" as including "modification" (as defined in Section 111(a) of the Act). "Modification" is defined in Section 111(a)(4) of the Act, 42 U.S.C. § 7411(a)(4), to be "any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted

by such source or which results in the emission of any air pollutant not previously emitted.” Under the Michigan SIP, “construction” means any physical change or change in the method of operation that would result in a change in emissions. Mich. Admin. Code R. 336.2801(m).

9. “Major modification” is defined at 40 C.F.R. § 52.21(b)(2)(i) as “any physical change in or change in method of operation of a major stationary source that would result in: a significant emissions increase (as defined in paragraph (b)(40) of this section) of a regulated NSR pollutant (as defined in paragraph (b)(50) of this section); and a significant net emission increase of that pollutant from the major stationary source.” Under the Michigan SIP, major modification is defined as any physical change or change in the method of operation that results in both a significant increase and a significant net increase of a regulated NSR pollutant from a major stationary source. Mich. Admin. Code R. 336.2801(aa)(i).

10. “Net emissions increase” means “the amount by which the sum of the following exceeds zero: (a) [a]ny increase in actual emissions [as defined by 40 C.F.R. § 52.21(b)(21)] from a particular physical change or change in the method of operation at a stationary source; and (b) [a]ny other increases and decreases in actual emissions [as defined by 40 C.F.R. § 52.21(b)(21)] at the source that are contemporaneous with the particular change and are otherwise creditable.” 40 C.F.R. § 52.21(b)(3)(i); Mich. Admin. Code R. 336.2801(ee)(i). A “significant” net emissions increase means an increase in the rate of emissions that would equal or exceed any of the following rates for the following pollutants: 40 tons per year of sulfur dioxide (SO<sub>2</sub>); 40 tons per year of nitrogen oxides (NO<sub>x</sub>); and 25 tons per year of particulate matter (PM). 40 C.F.R. § 52.21(b)(23)(i); Mich. Admin. Code R. 336.2801(qq). Effective July 15, 2008, SO<sub>2</sub> is regulated as a precursor to PM<sub>2.5</sub>. 73 Fed. Reg. 28321, 28327-28 (May 16, 2008).

11. As set forth at 42 U.S.C. § 7475(a)(4) and 40 C.F.R. § 51.166(j), a source with a major modification in an attainment or unclassifiable area must install and operate BACT, as defined in 42 U.S.C. § 7479(3) and 40 C.F.R. § 52.21(b)(12), where the modification would result in a significant net emissions increase of a pollutant subject to regulation under the Act. 42 U.S.C. § 7475(a)(4); Mich. Admin. Code R. 336.2802(3), 336.2810.

12. The relevant law defines BACT, in pertinent part, as “an emission limitation based on the maximum degree of reduction of each pollutant subject to regulation under this chapter emitted from or which results from any major emitting facility which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such facility. . . .” Section 169(3) of the Act, 42 U.S.C. § 7479(3); *See also* Mich. Admin. Code Rule 336.2801(f).

13. Though PSD is a preconstruction permitting program, the Act, the federal implementing regulations, and the Michigan SIP establish requirements for the lawful operation of the source following a modification.

#### **Non-attainment New Source Review**

14. Part D of Title I of the CAA, 42 U.S.C. §§ 7501-7515, sets forth provisions for New Source Review requirements for areas designated as nonattainment for purposes of meeting the

NAAQS. These provisions are referred to herein as “Nonattainment NSR.” The Nonattainment NSR program is intended to reduce emissions of air pollutants in areas that have not attained the NAAQS so that the areas make progress towards meeting the NAAQS.

15. Under Section 172(c)(5) of the Nonattainment NSR provisions of the CAA, 42 U.S.C. § 7502(c)(5), a state is required to adopt Nonattainment NSR SIP rules that include provisions that require that all permits for the construction and operation of modified major stationary sources within nonattainment areas conform to the requirements of Section 173 of the CAA, 42 U.S.C. § 7503. Section 173 of the CAA, in turn, sets forth a series of requirements for the issuance of permits for major modifications to major stationary sources within nonattainment areas. 42 U.S.C. § 7503.

16. By rule, EPA regulates SO<sub>2</sub> as a precursor to PM<sub>2.5</sub>. 73 Fed. Reg. 28321, 28327-28 (May 16, 2008). Until EPA approves the Michigan SIP provisions related to PM<sub>2.5</sub>, 40 C.F.R. Part 51, Appendix S applies to areas of PM<sub>2.5</sub> nonattainment, including Monroe County, Michigan. 73 Fed. Reg. 28321, 28343 (May 16, 2008).

17. Section 173 of the Act, 42 U.S.C. § 7503, 40 C.F.R. Part 51, Appendix S, and Mich. Admin. Code R. 336.2908 provide that construction and operating permits for a major modification in a nonattainment area may only be issued if, *inter alia*, (a) sufficient offsetting emission reductions have been obtained to reduce existing emissions to the point where reasonable further progress towards meeting the NAAQS is made; and (b) the pollution controls to be employed will reduce emissions to the lowest achievable emission rate.

18. “Major modification” is defined in 40 C.F.R. Part 51, Appendix S and Mich. Admin. Code R. 336.2901(s) as any physical change or change in the method of operation that results in both a significant increase and a significant net increase of a regulated NSR pollutant from a major stationary source.

19. “Net emissions increase” means the amount by which the sum of the following exceeds zero: (a) any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and (b) any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable as calculated under the applicable rules. 40 C.F.R. Part 51, Appendix S; Mich. Admin. Code R. 336.2901(v). A “significant” net emissions increase means an increase in the rate of emissions that would equal or exceed any of the following rates for the following pollutants: 40 tons per year of SO<sub>2</sub>; 40 tons per year of NO<sub>x</sub>; and 25 tons per year of PM. 40 C.F.R. Part 51, Appendix S; Mich. Admin. Code R. 336.2901(gg).

20. The relevant law defines the Lowest Achievable Emissions Rate (LAER), in pertinent part, as “the most stringent emissions limitation which is contained in [any SIP] for such class or category of source[s], unless . . . the proposed source demonstrates that such limitations are not achievable, or . . . which is achieved in practice by such class or category of source[s], whichever is more stringent.” 42 U.S.C. § 7501(3); *See also* Mich. Admin. Code Rule 336.2901(r).

21. Though Nonattainment NSR is a preconstruction permitting program, the CAA, the implementing regulations, and the Michigan Nonattainment NSR rules establish requirements for the lawful operation of the source following a modification.

### **New Source Review Reporting Requirements**

22. For Projects occurring after March 3, 2003, the relevant federal regulations and Michigan SIP require sources to maintain and report certain information where there is a “reasonable possibility” that a project may qualify as a major modification. 40 C.F.R. § 52.21(r)(6); Mich. Admin. Code Rule 336.2818(3). Under the rules, a reasonable possibility exists where the projected emissions increase is at least 50% of the significance level. 40 C.F.R. § 52.21(r)(6)(vi); Mich. Admin. Code R. 336.2818(3)(f)(ii). For an electric utility, where there is a reasonable possibility that the project will trigger NSR, the source is required to maintain information related to its analysis that the project is not a major modification under the law, including the basis for any emissions excluded from the calculated emissions increase. 40 C.F.R. § 52.21(r)(6)(i); Mich. Admin. Code R. 336.2818(3)(a), 336.2902(6)(a).

### **Title V Requirements**

23. Section 502(a) of the Act, 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 Act. 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.

24. Section 503 of the Act, 42 U.S.C. § 7661b, sets forth the requirement to timely submit an application for a permit, including information required to be submitted with the application.

25. Section 504(a) of the Act, 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.

26. 40 C.F.R. § 70.1(b) provides that: “All sources subject to the operating permit requirements of [Title V and 40 C.F.R. Part 70] shall have a permit to operate that assures compliance by the source with all applicable requirements.” *See also* Mich. Admin. Code R. 336.1211.

27. 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 . . .”

28. 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* Mich. Admin. Code R 336.1210.

29. 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. *See also* Mich. Admin. Code R 336.1210.

30. 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* Mich. Admin. Code R 336.1210(2)(b).

### **Michigan's Title V Requirements**

31. EPA promulgated final interim approval of Michigan's Title V program on January 10, 1997. *See* 62 Fed. Reg. 1387 (effective February 10, 1997). EPA promulgated full approval of Michigan's Title V program on December 4, 2001. *See* 66 Fed. Reg. 62949 (effective November 30, 2001).

32. The Michigan regulations governing the Title V permitting program are codified at Mich. Admin. Code R 336, and are federally enforceable pursuant to Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3).

33. Mich. Admin. Code R 336.1213(2) provides that the Title V permit "shall contain emission limits and standards, including ... operational requirements and limits that ensure compliance with all applicable requirements at the time of permit issuance."

34. Mich. Admin. Code R 336.1210(1) provides that "a person shall not operate any emission units located at a stationary source required to obtain a renewable operating permit under R 336.1211, except in compliance with all applicable terms and conditions of a renewable operating permit, unless a timely and administratively complete application for a renewable operating permit has been received by the department in accordance with the following provisions of [R 336.1210]."

35. Mich. Admin. Code R 336.1210(2)(b) provides that "[a]ny person who fails to submit any relevant facts or who has submitted incorrect information in an application for a renewable operating permit ... shall, upon becoming aware of the failure or incorrect submittal, promptly submit all supplementary facts or corrected information. Each submittal of any relevant facts or corrected information shall include a certification by a responsible official which states that, based on information and belief formed after a reasonable inquiry, the statements in the submittal are true, accurate, and complete."

## FACTUAL BACKGROUND

36. DTE is a Michigan corporation with its principal place of business at One Energy Plaza, Detroit, Michigan 48226-1279. Detroit Edison is a Michigan corporation with the same place of business as DTE Energy Co. Detroit Edison is a wholly-owned subsidiary of DTE.

37. Detroit Edison owns and operates the Belle River, Monroe, River Rouge, St. Clair, and Trenton Channel Power Plants. DTE is an operator of the Belle River, Monroe, River Rouge, St. Clair, and Trenton Channel Power Plants because, among other things, DTE employees make decisions involving construction and environmental matters at the plant. In addition, as Detroit Edison's parent company, DTE must approve major capital expenditures at the Belle River, Monroe, River Rouge, St. Clair, and Trenton Channel Power Plants, such as the installation of pollution controls or the modification work at issue here.

38. DTE and Detroit Edison are each a "person," as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

39. From April 5, 2005, to present, the Belle River, Monroe, River Rouge, St. Clair, and Trenton Channel Power Plants were located in areas classified as non-attainment for the 1997 fine particulates (PM<sub>2.5</sub>) NAAQS. *See 70 Fed. Reg.* 944, 980.

40. From December 14, 2009, to present, the Belle River, Monroe, River Rouge, St. Clair, and Trenton Channel Power Plants were located in areas classified as non-attainment for the 2006 fine particulates (PM<sub>2.5</sub>) NAAQS. *See 74 Fed. Reg.* 58688, 58738.

41. From June 15, 2004, to June 29, 2009, the Belle River, Monroe, River Rouge, St. Clair, and Trenton Channel Power Plants were located in areas classified as non-attainment for the 1997, 8-hour ozone NAAQS. *See 69 Fed. Reg.* 23858, 23910 and *74 Fed. Reg.* 30950.

42. The Belle River, Monroe, River Rouge, St. Clair, and Trenton Channel Power Plants were located in areas classified as attainment for all other pollutants at all other relevant time periods.

43. The Belle River Power Plant is a fossil fuel-fired electric utility steam generating station located next to the St. Clair Power Plant in St. Clair County, Michigan, and has the potential to emit more than 100 tons per year each of NO<sub>x</sub>, SO<sub>2</sub>, and PM. The Belle River plant consists of two operating coal-fired units. Units 1 and 2 are dry-bottom wall-fired boilers which commenced construction in 1978 and began operation in 1984 and 1985, respectively. Each unit is connected to an approximately 630 megawatt (MW) turbine generator.

44. The Monroe Power Plant is a fossil fuel-fired electric utility steam generating station located in Monroe County, Michigan, and has the potential to emit more than 100 tons per year each of NO<sub>x</sub>, SO<sub>2</sub>, and PM. The Monroe plant consists of four cell-burner coal-fired boilers originally constructed in the early 1970s. Each boiler is connected to a turbine generator with a capacity of 750 to 795 MWs.

45. The River Rouge Power Plant is a fossil fuel-fired electric utility steam generating station located in Wayne County, Michigan, and has the potential to emit more than 100 tons per year each of NO<sub>x</sub>, SO<sub>2</sub>, and PM. The River Rouge plant consists of two operating coal-fired boilers. Unit 1 was a dry-bottom wall-fired boiler taken out of service in the early 1980s and repowered to natural gas in or around 2000. Unit 2 is a tangentially-fired boiler that commenced operation in or around 1957 and is connected to a 260 MW turbine generator. Unit 3 is a dry-bottom wall-fired boiler that commenced operation in or around 1957 and is connected to a 300 MW turbine generator.

46. The St. Clair Power Plant is a fossil fuel-fired electric utility steam generating station located in St. Clair County, Michigan, and has the potential to emit more than 100 tons per year each of NO<sub>x</sub>, SO<sub>2</sub>, and PM. The St. Clair plant consists of six boilers. Units 1 through 4 are dry-bottom wall-fired boilers that commenced construction in or around 1953. Each boiler is connected to a turbine generator with a capacity of 160 MWs. Unit 5 is a 300 MW cyclone boiler that was taken out of service in 1979. Units 6 and 7 are tangentially-fired boilers that commenced construction in or around 1961 and 1969 and are connected to a 320 MW and 450 MW turbine generator, respectively.

47. The Trenton Channel Power Plant is a fossil fuel-fired electric utility steam generating station located in Wayne County, Michigan, and has the potential to emit more than 100 tons per year each of NO<sub>x</sub>, SO<sub>2</sub>, and PM. The Trenton Channel plant consists of five operating coal-fired units. The four smaller tangentially-fired boilers (referred to as units 16 through 19) are connected to two 120 MW turbine generators that commenced operation in 1949 and 1950, respectively. The larger unit 9A is a tangentially-fired boiler that began operation in 1968 and is connected to a 520 MW turbine generator.

48. The Belle River, Monroe, River Rouge, St. Clair, and Trenton Channel Power Plants are each "fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour." Therefore, each of these plants constitutes a "major stationary source" within the meaning of 40 C.F.R. § 52.21(b)(1)(i)(a); and a "major emitting facility" within the meaning of Section 169(1) of the Act, 42 U.S.C. § 7479(1).

49. DTE and Detroit Edison completed physical changes and/or changes in the method of operation at the Belle River, Monroe, River Rouge, St. Clair, and Trenton Channel Power Plants, as described in the tables in Appendix A of this document and Appendix A through E of the July 24, 2009 NOV/FOV.

## **VIOLATIONS**

### **Prevention of Significant Deterioration and Non-Attainment New Source Review**

50. The physical changes and/or changes in the method of operation performed in each outage referred to in Paragraph 49, above, resulted in a significant net emissions increase, as defined in the relevant PSD or Nonattainment NSR rules, and the Michigan SIP, of SO<sub>2</sub>, NO<sub>x</sub>, and/or PM.

51. The physical changes and/or changes in the method of operation performed in each outage referred to in Paragraph 49, above, constitute a "major modification" under the PSD regulations of 40 C.F.R. § 52.21, the Nonattainment NSR regulations of 40 C.F.R. Part 51, Appendix S, and the Michigan SIP.

52. Each outage referred to in Paragraph 49, above, is a major modification based on the entire scope of work performed during the outage. In these instances, the entire scope of work performed during the outage is properly considered together when determining whether a modification occurred. In addition, individual physical changes and/or changes in the method of operation specifically listed in Appendix A also are major modifications without reference to the rest of the scope of work performed during the outage.

53. For each of the modifications referred to in Paragraph 49, above, DTE and Detroit Edison failed to obtain a PSD and/or non-attainment NSR permit as required by 40 C.F.R. § 52.21, 40 C.F.R. Part 51, Appendix S, and the Michigan SIP.

54. DTE and Detroit Edison are in violation of PSD requirements, Section 165 of the Act, 42 U.S.C. § 7475, and 40 C.F.R. § 52.21 for constructing major modifications, as referred to in Paragraph 49, above, to existing major sources at their Belle River, Monroe, River Rouge, St. Clair, and Trenton Channel Power Plants without applying for or obtaining the PSD permits and operating the modified facilities without installing the BACT or going through PSD review, and installing appropriate emission control equipment in accordance with a BACT analysis.

55. DTE and Detroit Edison are in violation of non-attainment NSR requirements, Sections 171-193 of the Act, 42 U.S.C. §§ 7501-7515, and 40 C.F.R. Part 51, Appendix S, Emission Offset Interpretative Ruling, for constructing major modifications, as referred to in Paragraph 49, above, to existing major sources at their Belle River, Monroe, River Rouge, St. Clair, and Trenton Channel Power Plants without applying for a Permit to Install and operating the modified facilities without installing LAER, obtaining federally enforceable emission offsets at least as great as the new or modified source's emissions, certifying that all other major sources that it owns or operates are in compliance with the Act, and demonstrating that the benefits of the proposed source or modification significantly outweigh the environmental and social costs imposed as a result of its construction or modification.

#### **Violations of Title V**

56. DTE and Detroit Edison have failed and/or continue to fail to submit timely and complete Title V permit applications for the Belle River, Monroe, River Rouge, St. Clair, and Trenton Channel Power Plants with information pertaining to the modifications referred to in Paragraph 49, above, and with information concerning all applicable requirements, including, but not limited to, the requirement to apply, install and operate BACT or LAER for NO<sub>x</sub>, SO<sub>2</sub>, CO, PM, PM<sub>10</sub>, and/or PM<sub>2.5</sub> at the plants and also failed to supplement or correct the Title V permit applications for these plants 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(a), (b) and (c), 70.6 and 70.7(b), and Mich. Admin.R 336. DTE and Detroit Edison thereafter operated Belle River, Monroe, River Rouge, St. Clair, and Trenton Channel without PSD requirements and without having an operating permit that requires compliance with PSD requirements or that contains a compliance plan for PSD requirements for which the Facility is not in compliance.

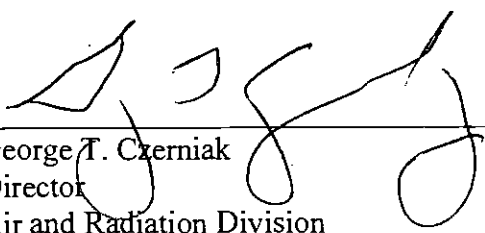
### ENFORCEMENT AUTHORITY

57. Section 113(a) (1) of the Act, 42 U.S.C. § 7413(a)(1), provides that at any time after the expiration of 30 days following the date of the issuance of a Notice of Violation, the Administrator may, without regard to the period of violation, issue an order requiring compliance with the requirements of the state implementation plan or permit, issue an administrative penalty order pursuant to Section 113(d), or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties.

58. Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), provides in part that if the Administrator finds that a person has violated, or is in violation of any requirement or prohibition of any rule...promulgated...under...[Title I or Title V of the Act], the Administrator may issue an administrative penalty order under Section 113(d), issue an order requiring compliance with such requirement or prohibition, or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties.

Date

3/13/13

  
George T. Czerniak  
Director  
Air and Radiation Division

### CERTIFICATE OF MAILING

I, Loretta Shaffer, certify that I sent a Notice of Violation and Finding of Violation, No. **EPA-5-13-MI-07**, by Certified Mail, Return Receipt Requested, to:

Skiles W. Boyd, Vice President  
Environmental Management & Resources  
DTE Energy  
One Energy Plaza  
Detroit, Michigan 48226-1279

I also certify that I sent copies of the Notice of Violation and Finding of Violation by first class mail to:

Michael J. Solo, Jr, Attorney  
DTE Energy  
One Energy Plaza  
Detroit, Michigan 48226-1279

F. William Brownell, Partner  
Hunton & Williams LLP  
2200 Pennsylvania Avenue, NW  
Washington, DC 20037

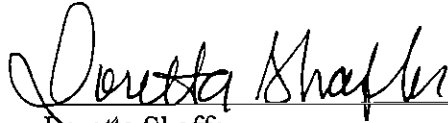
Mark B. Bierbower  
Hunton & Williams LLP  
2200 Pennsylvania Avenue, NW  
Washington, DC 20037

Thomas Hess, Unit Supervisor  
Compliance and Enforcement Section  
Michigan Department of Environmental Quality  
Air Quality Division  
P.O. Box 30260  
Lansing, Michigan 48909

Chris Ethridge, District Supervisor  
Michigan Department of Environmental Quality  
Southeast Michigan District Office  
27700 Donald Court  
Warren, Michigan 48092-2793

Jack Larsen, District Supervisor  
Michigan Department of Environmental Quality  
State Office Building, 4<sup>th</sup> Floor  
301 E. Louis B. Glick Highway  
Jackson, Michigan 49201

On the 14 day of March 2013

A handwritten signature in black ink, appearing to read "Loretta Shaffer", written over a horizontal line.

Loretta Shaffer  
Administrative Professional Assistant  
Planning and Administration Section

CERTIFIED MAIL RECEIPT NUMBER: 7009 1680 0000 7674 1255