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Via E-Mail and First Class Mail

July 25, 2014

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

Re: Response to "Second Violation Notice" dated May 19, 2014
United States Steel Corporation
SRN: A7809, Wayne County

Dear Ms. Koster:

U. S. Steel is in receipt of the Michigan Department of Environmental Quality's (Department's) "Second" Violation Notice (VN) dated May 19, 2014, in which, again, the Department alleges that U. S. Steel installed two emergency generators in 2006 without obtaining a permit–to-install (PTI) in violation of R 336.1201(1). We previously provided a detailed response to the first notice. However, after reading your response to that correspondence, it is apparent that the Department has not given any substantial consideration to our response; and, instead, simply refers to a definition of "fuel-burning equipment" provided in R335.1106 that it alleges makes the Rule 282(b) not applicable to the U. S. Steel generators; and provides its own calculation (which is really a theoretical instantaneous maximum heat calculation methodology) to determine the alleged BTU rating of the generators to determine that the Rule 285(g) exemption also does not apply.

In short, after further review and consideration, U. S. Steel respectfully disagrees with the Department's assertions in the March 13, 2014; and May 19, 2014 notices. Contrary to the Department's assertions, after further review of *all* relevant Department regulations and Department and EPA policies, we believe the Department's above-reference violation notices are without merit and disregard the intent of the Department's regulatory exemptions, as explained herein. To the contrary, we reviewed Department regulations, permit actions, and guidance which support a finding that the generators would be exempt from Rule 201 permitting. We trust that you understand that U. S. Steel takes seriously its obligation to comply with applicable permitting procedures and proper precedent. It is in this spirit that we are providing this correspondence. However, U. S. Steel finds it especially troubling to be subject to violation notices and proposed penalties because of the Department's apparent change in position or interpretation of regulations.

Rule 282(b) Exemption

In the May 19, 2014 letter, the Department alleges that Rule 282(b) exemption does not apply to the two generators. In the response, the Department indicated that U. S. Steel "failed to explain how the emergency generators meet the definition of fuel-burning equipment."

However, the Department, on the other hand, has failed to explain why it is has regularly applied the exemption to similar emergency generators in the state.

The definition of "fuel-burning equipment" in Rule 106 is provided below:

> "(i) "Fuel-burning equipment" means a device, contrivance, or equipment used principally, but not exclusively, for the burning of fuel, and all appurtenances thereto, including ducts, breechings, control equipment, fuel-feeding equipment, ash removal equipment, combustion controls, and stacks and chimneys, which *equipment is used for indirect heating* in which the material being heated is not contacted by, and does not add substance to, the products of combustion. . . "

The exemption at Rule 282(b) provides:

> "The requirement of R 336.1201(1) to obtain a permit to install does not apply to any of the following
>
> (b) ***Fuel-burning equipment which is used for*** space heating, service water heating, ***electric power generation***, oil and gas production or processing, ***or indirect heating*** and which burns only the following fuels..."

In the response, the Department relies solely on the definition in Rule 106 to render the exemption inapplicable to the U. S. Steel generators. However, such an analysis is overly simplified in light of the specific language in Rule 282(b). The Department cannot disregard the language in Rule 282(b). Simply, the language in Rule 106 does not comport with the language in the Rule 282(b) exemption. Since the definition of fuel-burning equipment in Rule 106 is limited to "equipment. . .used for indirect heating," it is apparent that the definition cannot logically apply to the Rule 282(b). On its face, the Rule 282(b) exemption does not require the device (electric power generation) to use indirect heat to qualify for the exemption. Importantly, the Department uses the disjunctive ("or") in the uses for "fuel-burning equipment" in 282(b), meaning that "electric power generation" need not occur alongside "indirect heating." If, as shown by 1282(b), "electric power generation" is an acceptable use of "fuel-burning equipment," [which it is by proper application of Rule 282(b)], then making "indirect heating" a necessary function of "fuel-burning equipment" is improper interpretation of the definition when applied to the Rule 282(b) exemption. Furthermore, the requirement that the emergency generator to use "indirect heat" would render the exemption language for electric power generation meaningless.

As noted above, the Department itself has regularly applied the Rule 282(b) exemption to other diesel generators in the state. For example, in the Staff Report for Waste Management, Inc. – Autumn Hills Recycling and Disposal Facility, SRN: N6006, May 7, 2012, Permit No. MI-ROP-N6006-2012, the Department applies the 282 exemption to "[t]hree diesel-powered generators; each with a design heat input < 20 MMbtu/hr." These generators are substantially similar (if not identical) to the U. S. Steel generators (diesel-fired, and less than 20 MMbtu/hr – even by the Department's calculations) to which the Department issued the violation notices alleging that the generators are subject to Rule 201 permitting Furthermore, in the staff report, the Department identifies Rule 212(4) as the basis for exempting the diesel-fuel fired generators from ROP requirements. After reviewing 212(4) it is apparent that the specific citation is 212(4)(b). Similar to Rule 282(b) , Rule 212(4)(b), provides that:

> "Unless subject to a process-specific emission limitation or standard, all of the following process or process equipment need only be listed in an administratively complete application for a renewable operating permit. The list shall include a description of the process or process equipment, including any control equipment pertaining to the process or process equipment, the source classification code (SCC), and a reference to the subdivision of this subrule that identifies the process or process equipment. . .

(b) Fuel-burning furnaces, ovens, and heaters listed in R 336.1282."

Thus, by applying these provisions as the basis for exempting the generator from permit to install and ROP requirements, the Department affirmatively concluded that the diesel-fuel fired generator are "fuel-burning" equipment. ROP Permit No. MI-ROP-N6006-2012 went through the Department's and U. S. EPA's review process.[1] And, in the Waste Management permit action, the generators rightfully are not included on the issued ROP. The issuance of the Waste Management permit and staff report is well after the Department's issuance of the July 22, 1997 letter ("1997 letter") that the Department relies upon to inappropriately disregard U. S. Steel's response to the March violation notice. Furthermore, the staff report is a public document and is readily available; whereas the 1997 Department correspondence to an individual source is not readily available; and we only were provided a copy when it was specifically requested. In any case, the 2012 permit action is well after the Department's issuance of the 1997 letter which puts the validity of the 1997 letter in question, if it ever were a valid Department interpretation, noting that Department policy statements cannot contravene explicit regulatory or statutory language. In light of the Department's actions since issuance of the 1997 letter, the regulated community should be able to rely on the subsequent Department actions which would indicate that the 1997 letter no longer (if ever) represents the Department's current policy. In addition, U. S. Steel notes that, interestingly, the Department has specifically applied the 282(b) exemption to indirect as well as *direct* natural gas fired space heaters.[2]

With regards to any inconsistencies between Rule 282(b) and Rule 106, U. S. Steel notes that the canons of regulatory construction indicate that the more specific regulatory language prevails over general regulatory language if the general language would render the specific language meaningless, as it would in this case. Thus, the Department's interpretation would render the Department's use of "or" in Rule 282(b) and the scope of the exemption otherwise meaningless.

U. S. Steel also reminds the Department that if it somehow intends to use the 1997 letter as policy, despite the Department's own actions to the contrary since then the regulated community needs to be made aware of this alleged policy. In the 1997 letter, the Department does not address the use of disjunctive "or" in Rule 285(b), or what types of electric power generators would qualify for the exemption; and it does not further explain the Department's rationale nor does it put others on notice of its policy. With regards to the notice deficiencies, U.

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[1] While U. S.Steel has not completed an exhaustive review of all ROP permits issued in Michigan, our review of a representative sample of ROPs and corresponding staff reports indicates that the Department regularly applies the 282(b) exemption to diesel-fuel fired generators and similar units. For example, see the following reports in which the Department applies the 282(b) and/or 212(4) exemptions to generators and, in some instances, other types of engines: Staff Report for ANR Pipeline – Winfield Compressor Station, SRN N5578, December 21, 2009, where the Department applies the exemptions to an emergency diesel generator; Staff Report for Detroit Public Lighting, SRN B2185, March 30, 2009, in which the Department applies the exemptions to an "Emergency Black-Start" generator; and a diesel-fuel fired Fire Pump; Staff Report of Steelcase, Inc – Kenwood Complex, SRN N0677, May 12, 2008, where the Department applied the exemptions to eight generators, with many being diesel-fuel fired generators and others natural gas-fired; Staff Report for the City of Wyandotte Municipal Power Plant, SRN: B2132, Permit No. MI-ROP-B2132-2010, the Department states that a diesel-fuel fired emergency generator, identified as EUDSLGEN, was listed as exempt from Rule 201 (permit to install) pursuant to Rule 282(b); Staff Report for Hillsdale Board of Public Utilities – Hillsdale Power Plant, SRN B7536, June 8, 2009, where the Department applies the 282(b) exemption to a 20 HP engine for back up air compressor; and Staff Report for MichCon Milford Compressor Station, SRN B7221, May 24, 2010, where the Department applies the 282(b) and 212(4)(b) exemptions to a emergency diesel-fuel fired generator.

[2] See Staff Report for Ford Motor Company, Livonia Transmission Plant, SRN A8645, February 27, 2012.

S. Steel simply refers the Department to our prior communication. In light of the issues identified above, U. S. Steel asserts that the 1997 letter is incorrect and has no legal effect.

Finally, U. S. Steel refers the Department to the Department's Rule 1402. If the definition of fuel-burning equipment of Rule 106 were to apply to Rule 1402, Rule 1402 would be meaningless. U. S. Steel notes that the Department has included Rule 1402 limitations for diesel-fuel fired generators; and, in a prior draft for U. S. Steel included the Rule's provisions, but, then, revised the draft permit and removed the reference to Rule 1402 without explanation. The Department regularly cites Rule 1402 as applying to "generators" and "other types of "fuel-burning equipment." [3]

Other than a 1997 letter to an energy company, the Department has not issued any guidance or provided any authority confirming its definition of fuel-burning equipment. To the contrary, the Department has included "generators" among other types of "fuel burning equipment" for purposes of greenhouse gas permitting.

Rule 285(g) Exemption

In the May 14, 2014 letter, the Department explained that it disagreed with U. S. Steel's calculations. We have not changed our position that the generators would also qualify for the separate exemption provided in Rule 285(g). For the most part, we refer the Department to our letter dated April 1, 2014, in which we explain that the Department's methodology is not a general industry practice; and it, again, has not applied notice to the regulated community on such determinations.

The Department's calculations merely provide a theoretical instantaneous maximum heat calculation to determine the alleged BTU rating of the generators. The rating methodology is not a practical application. In addition, the methodology is not a common practice by industry, U. S. EPA, or other jurisdictions. In fact, it is contrary to the determinations that U. S. EPA uses, as provided in AP-42, Appendix A, where EPA provides conversions from horsepower to BTU consistent with U. S. Steel's calculations. While we recognize that the Department is not compelled to use EPA methodology and calculations to determine the applicability of a state rule (as the Department reiterated in its May 14, 2014 letter), the regulated community must have notice of the Department's intended practice of application of a state rule, especially when such practice is contrary to a commonly accepted practice such as in this case.

Rule 290 Exemption

Rule 290 exempts emission units with limited emissions. While U. S. Steel has not previously asserted that a Rule 290 exemption would apply because the Rule 282 and Rule 285(b) exemptions apply, we also note that the emergency generators are not subject to Rule 201 permitting because they qualify under Rule 290. This rule applies to emission units with limited emissions. A review of a representative sample of Department-issued ROPs and staff reports indicates that the Department has also referred to Rule 290 as an applicable exemption to diesel-fuel fired exemptions. However, U. S. Steel just refers to the Department to this other

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[3] *See, e.g.*, http://www.deq.state.mi.us/aps/downloads/permits/PubNotice/51-13/51-13FactSheet.pdf;http://www.deq.state.mi.us/aps/downloads/GHG/GHG%20Title%20V%20Permitting%20Guidance.pdf.

exemption, but we believe that the Rule 282(b) exemption more appropriately applies to the generators.

Lapse of Time from Notice of Installation of the Generators and the Violation Notices

Finally, U. S. Steel questions the Department's issuance of the violation notices and proposing a penalty since the Department was made aware of installation of the generators in 2006. While nearly eight years have passed, U. S. Steel reasonably relied upon the Department's acceptance of the notification without a request for U. S. Steel to submit a permit to install application as acquiescence of U. S. Steel's determination.

Conclusion

For reasons explained herein, installation of the generators did not and does not require the submittal of a permit to install. The rationale provided by the Department in the issuance of the two violation notices is contrary to the Department's own rules and regulations; as well as contrary to the Department's own actions. We are perplexed with the Department's continued insistence that the generators are subject to Rule 201. We are especially troubled with the Department's issuance of violation notices for taking the same actions as the Department itself has previously taken on several occasions. U. S. Steel simply requests that the Department apply its regulations and policies in an equitable manner to all sources in Michigan. In short, no violation of Rule 201 occurred by the installation of the two emergency generators at U. S. Steel.

We encourage the Department to reconsider its position on this issue, so that both of our limited resources can be used for more meaningful purposes. We appreciate the Department's review and consideration of this correspondence; and are hopeful that this can be resolved without protracted costly litigation. Should you have any questions regarding this correspondence, please contact me.

Sincerely,

David W. Hacker

cc: David Smiga, Esq, (USS)
Alexis Piscitelli (USS)
Bradley Wargnier (USS)
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