



REGION 5

CHICAGO, IL 60604

VIA ELECTRONIC MAIL

DELIVERY RECEIPT REQUESTED

Fadi Mourad, Director, Environmental Strategy
DTE Energy Company
1 Energy Plaza
Detroit, MI 48226

Re: Notice of Violation
DTE Energy Services, Inc., DTE Energy Resources, LLC, and DTE Energy Company
Re: EES Coke Battery Facility
River Rouge, MI

Dear Fadi Mourad:

The U.S. Environmental Protection Agency is issuing the enclosed Notice of Violation (NOV) to DTE Energy Services, Inc., DTE Energy Resources, LLC, and DTE Energy Company (collectively, "you") under Section 113(a)(1) of the Clean Air Act, 42 U.S.C. § 7413(a)(1). We find that you are violating the Michigan State Implementation Plan at the EES Coke Battery River Rouge facility. The violations alleged herein are substantively the same as the violations alleged against EES Coke Battery, LLC in the September 15, 2020 NOV. The purpose of this NOV is to identify certain DTE corporate entities as additional owners/operators of the EES Coke Battery River Rouge facility.

Section 113 of the Clean Air Act gives us several enforcement options. These options include issuing an administrative compliance order, issuing an administrative penalty order and bringing a judicial civil or criminal action.

We are offering you an opportunity to confer with us about the violations alleged in the NOV. The conference will give you an opportunity to present information on the specific findings of violation, any efforts you have taken to comply and the steps you will take to prevent future violations. In addition, in order to make the conference more productive, we encourage you to submit to us information responsive to the NOV prior to the conference date.

Please plan for your facility's 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 technical contacts in this matter are Virginia Galinsky and Daniel Schaufelberger. The EPA legal contacts in this matter are Christopher Grubb and Justin Berchiolli. You may email them at galinsky.virginia@epa.gov and schaufelberger.daniel@epa.gov to request a conference, or your attorney may contact the EPA legal contacts, Christopher Grubb at grubb.christopher@epa.gov or

Justin Berchiolli at berchiolli.justin@epa.gov. You should make the request within 10 calendar days following receipt of this letter.

We should hold any conference within 30 calendar days following receipt of this letter.

Sincerely,

Brian Dickens
Supervisor, Air Enforcement and Compliance Assurance
Section (MN/OH)

cc: Jenine Camilleri, Enforcement Unit Supervisor
Air Quality Division
Michigan Department of Environment Great Lakes and Energy

April Wendling, Supervisor
Air Quality Division, Detroit District
Michigan Department of Environment Great Lakes and Energy

Andrea Hayden
DTE Energy Company

S. Lee Johnson
Honigman LLP

Molly McGinley
Honigman LLP

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:	)	
DTE Energy Services, Inc.	)	NOTICE OF VIOLATION
Detroit, Michigan	)	
	)	EPA-5-24-MI-03
DTE Energy Resources, LLC	)	
Detroit, Michigan	)	
	)	
DTE Energy Company	)	
Detroit, Michigan	)	
	)	
Proceedings Pursuant to	)	
Section 113(a)(1) of the	)	
Clean Air Act, 42 U.S.C.	)	
§ 7413(a)(1)	)	

NOTICE OF VIOLATION

The U.S. Environmental Protection Agency (EPA) is issuing this Notice of Violation under Section 113(a)(1) of the Clean Air Act, 42 U.S.C. § 7413(a)(1). EPA finds that DTE Energy Services, Inc., DTE Energy Resources, LLC, and DTE Energy Company are violating the Michigan State Implementation Plan (SIP), as follows:

Statutory and Regulatory Background

Prevention of Significant Deterioration

1. The Prevention of Significant Deterioration (PSD) provisions of Part C of Title I of the Clean Air Act (CAA) require preconstruction review and permitting for modifications of stationary sources. See 42 U.S.C. §§ 7470-7492. Pursuant to applicable regulations, if a major stationary source located in an attainment area is planning to make a major modification, then that source must obtain a PSD permit before beginning actual construction. See 40 C.F.R. § 52.21(i). To obtain this permit, the source must, among other things, undergo a technology review and apply Best Available Control Technology (BACT); perform a source impact analysis; perform an air quality analysis and modeling; submit appropriate information; and conduct additional impact analyses as required.
2. 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.
3. A state may comply with Section 161 of the CAA 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).

4. On September 16, 2008, EPA conditionally approved Michigan's PSD SIP provisions. *73 Fed. Reg.* 53366. This approval, which became effective on October 16, 2008, includes 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, September 12, 2012, April 4, 2014, and May 12, 2021, EPA approved revisions to Michigan's PSD SIP provisions. *75 Fed. Reg.* 59083, *77 Fed. Reg.* 56124, *79 Fed. Reg.* 18802, and *86 Fed. Reg.* 25954, respectively. The Michigan PSD SIP provisions, which apply to areas designated as attainment under the CAA, are codified at Mich. Admin. Code R. 336.2801 - 336.2823 ("Part 18").
5. Section 165(a) of the CAA, 42 U.S.C. § 7475(a), among other things, prohibits the construction 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 CAA 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) - 336.2818.

Nonattainment New Source Review

6. Part D of Title I of the CAA, 42 U.S.C. §§ 7501-7515, sets forth provisions for New Source Review (NSR) requirements for areas designated as nonattainment for purposes of meeting the National Ambient Air Quality Standards (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.
7. 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.
8. On December 16, 2013, EPA approved Mich. Admin. Code R. 336.2901 to 336.2908 ("Part 19") as part of the federally enforceable SIP for Michigan, titled, "New Source Review for Major Sources Impacting Nonattainment Areas." *78 Fed. Reg.* 76064. On May 12, 2021, EPA approved revisions to Michigan's Nonattainment NSR SIP provisions. *86 Fed. Reg.* 25954.
9. Section 173 of the CAA, 42 U.S.C. § 7503, and Mich. Admin. Code R. 336.2908, provide that construction 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.

Definitions

10. Mich. Admin. Code R. 336.2901(b) defines “baseline actual emissions” for an existing emissions unit, other than an electric utility steam generating unit, as the average rate, in tons per year, at which the emissions unit actually emitted the regulated new source review pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the department for a permit required under R 336.1201. *See also* Mich. Admin. Code R. 336.2801(b) (for PSD).
11. Mich. Admin. Code R. 336.2901(s) defines “lowest achievable emission rate” or “LAER,” for any source, as the more stringent rate of emissions based on either of the following:
 - (i) The most stringent emissions limitation that is contained in the implementation plan of any state for the same class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that the limitations are not achievable.
 - (ii) The most stringent emissions limitation that is achieved in practice by the same class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within a stationary source. Application of the term shall not permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source performance standard.
12. Mich. Admin. Code R. 336.2801(f) defines “best available control technology” or “BACT,” as:

an emissions limitation, including a visible emissions standard, based on the maximum degree of reduction for each regulated new source review pollutant, which would be emitted from any proposed major stationary source or major modification which the department - on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs -- determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combination techniques for control of the pollutant.
13. Mich. Admin. Code R. 336.2901(t) defines “major modification” as any physical change in or change in the method of operation of a major stationary source that would result in both a significant emissions increase of a regulated new source review pollutant and a significant net emissions increase of that pollutant from the major stationary source. *See also* Mich. Admin. Code R. 336.2801(aa) (for PSD).

14. Mich. Admin. Code R. 336.2901(u) defines “major stationary source” as “[a]ny stationary source of air pollutants that emits or has the potential to emit 100 tons per year or more of any regulated new source review pollutant” *See also* Mich. Admin. Code R. 336.2801(cc) (for PSD).

15. Mich. Admin. Code R. 336.2901(w) defines “net emissions increase” with respect to any regulated new source review pollutant emitted by a major stationary source, as:

the amount by which the sum of the following exceeds zero: (A) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated under R 336.2902(2). (B) Any other increases and decreases in actual emissions at the major stationary source that occur within the contemporaneous period and are otherwise creditable.

See also Mich. Admin. Code R. 336.2801(ee) (for PSD).

16. Mich. Admin. Code R. 336.2901(ee) defines “projected actual emissions” as:

the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated new source review pollutant in any 1 of the 5 years (12-month period) following the date the unit resumes regular operation after the project, or in any 1 of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit that regulated new source review pollutant, and full utilization of the unit would result in a significant emissions increase, or a significant net emissions increase at the major stationary source.

See also Mich. Admin. Code R. 336.2801(ll) (for PSD).

17. Mich. Admin. Code R. 336.2901(ff) defines “regulated new source review pollutant” to include:

[a]ny pollutant for which a national ambient air quality standard has been promulgated” and “[a]ny pollutant that is a constituent or precursor of a general pollutant listed under paragraphs (i) or (ii) of this subdivision, provided that a constituent or precursor pollutant may only be regulated under new source review as part of regulation of the general pollutant.

See also 40 Mich. Admin. Code R. 336.2801(nn) (for PSD).

18. Mich. Admin. Code R. 336.2901(hh) defines “significant” to mean, in reference to a net emissions increase of sulfur dioxide, a rate of emissions that would equal or exceed 40 tons per year (tpy) of sulfur dioxide (SO₂). *See also* Mich. Admin. Code R. 336.2801(qq)(C) (for PSD).

19. Mich. Admin. Code R. 336.2801(qq) defines “significant” to mean, in reference to a net emissions increase of particulate matter with an aerodynamic diameter of 2.5 microns or less (PM_{2.5}), a rate of emissions that would equal or exceed 40 tpy of sulfur dioxide. *See also* 40 C.F.R. § 52.21(b)(23).

20. Mich. Admin. Code R. 336.2901(ii) defines “significant emissions increase” for a regulated new source review pollutant as “an increase in emissions that is significant for that pollutant.” See *also* Mich. Admin. Code R. 336.2801(rr) (for PSD).

Nonattainment NSR and PSD Applicable Requirements

21. Mich. Admin. Code R. 336.2902(1) provides that the nonattainment new source review requirements apply to each major modification that is located in a nonattainment area and which is major for the pollutant for which the area is designated nonattainment.

22. Mich. Admin. Code R. 336.2902(2)(b) provides that:

[t]he procedure for calculating whether a significant emissions increase will occur depends upon the type of emissions units being modified. The procedure for calculating whether a significant net emissions increase will occur at the major stationary source is contained in the definition of net emissions increase. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

23. Mich. Admin. Code R. 336.2902(2)(c) provides that:

[t]he actual-to-projected-actual applicability test may be used for projects that only involve existing emissions units. A significant emissions increase of a regulated new source review pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline emissions, for each existing emissions unit, equals or exceeds the significant amount for that pollutant.

See also Mich. Admin. Code R. 336.2802(4)(c) (for PSD).

24. Mich. Admin. Code R. 336.2908(3) provides that “[t]he major stationary source or major modification shall comply with the lowest achievable emissions rate for each regulated new source review pollutant for which the area is designated as nonattainment.”

25. Mich. Admin. Code R. 336.2908(5) requires that an emission reduction offset for each major nonattainment air contaminant shall be provided before the start-up of the new major stationary source or major modification and identifies the requirements for such offsets.

26. Mich. Admin. Code R. 336.2902(6) provides that certain reporting requirements:

apply to projects at existing emissions units at a major stationary source that is subject to either prevention of significant deterioration of air quality regulations or new source review for major sources in nonattainment areas regulations in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner or operator elects to use the method in R 336.2901(dd) or R 336.2801(ll) for calculating projected actual emissions.

27. Mich. Admin. Code R. 336.2902(6)(c) provides that:

[t]he owner or operator shall monitor the emissions of any regulated new source review pollutant that could increase as a result of the project and that is emitted by any emissions units identified under subdivision (a)(ii) of this subrule and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated new source review pollutant at the emissions unit.

28. Mich. Admin. Code R. 336.2902(6)(f) provides, in pertinent part, “A reasonable possibility that a project may result in a significant emissions increase occurs when the project is subject to R 336.1201(1)(a) and is not exempted from the requirement to obtain a permit to install by R 336.1278 to R 336.1290.”

29. Where the two criteria in Mich. Admin Code R. 336.2902(6) are met (“reasonable possibility” and use of projected actual emissions calculations), Mich. Admin Code R. 336.2902(6)(e) identifies the circumstances that trigger the owner or operator’s duty to submit a report, as well as the required contents of such a report:

If the unit is an existing unit other than an electric utility steam generating unit, then the owner or operator shall submit a report to the department if the annual emissions, in tons per year, from the project identified pursuant to this subrule, exceed the baseline actual emissions by a significant amount for that regulated new source review pollutant, and if such emissions differ from the preconstruction projection. The report shall be submitted to the department within 60 days after the end of such year. The report shall contain all of the following information:

- (i) The name, address and telephone number of the major stationary source.
- (ii) The annual emissions as calculated under subdivision (c) of this subrule.
- (iii) Any other information that the owner or operator wishes to include in the report, for example, an explanation as to why the emissions differ from the preconstruction projection.

30. Mich. Admin. Code R. 336.2802(2) provides that the prevention of significant deterioration requirements apply to the construction of any new major stationary source or the major modification of any existing major stationary source. *See also* 40 C.F.R. § 52.21(a)(2).

31. Mich. Admin. Code R. 336.2802(4) provides:

(a) . . . The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(b) The procedure for calculating whether a significant emissions increase will occur depends upon the type of emissions units being modified. The procedure for calculating,

before beginning actual construction, whether a significant net emissions increase will occur at the major stationary source is contained in the definition of net emissions increase. Regardless of preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

32. Mich. Admin. Code R. 336.2810(3) requires that a major modification shall apply BACT for each regulated new source review pollutant for which it would be a significant net emissions increase at the source in an area designated as attainment.
33. Mich. Admin. Code R. 336.2811 requires a source impact analysis which demonstrates that allowable emission increases from the proposed major source or major modification, in conjunction with all other applicable emissions increases or reduction, including secondary emissions, shall not cause or contribute to air pollution in violation of either (a) any national ambient air quality standard in any air quality control region; or (b) any applicable maximum allowable increase over the baseline concentration in any area.
34. Mich. Admin. Code R. 336.2813 requires an air quality analysis be conducted in the area of the major modification, for each pollutant which has a significant increase.
35. Mich. Admin. Code R. 336.2815 requires an additional impact analysis on the impairment to visibility, soils, and vegetation that would occur as a result of the major source or major modification and general commercial, residential, industrial, and other growth associated with the major source or major modification.

The River Rouge Facility

36. DTE Energy Services, Inc., DTE Energy Resources, LLC, and DTE Energy Company (collectively, "DTE") and EES Coke Battery, LLC ("EES Coke") own and operate a coke oven battery at 1400 Zug Island Road, River Rouge, Wayne County, Michigan (River Rouge Facility).
37. Effective March 3, 1978, EPA designated the area around the River Rouge Facility as attainment for SO₂. 43 *Fed. Reg.* 8962 (March 3, 1978).
38. Effective October 4, 2013, EPA designated the area around the River Rouge Facility as nonattainment for SO₂. 78 *Fed. Reg.* 47191 (Aug. 5, 2013).
39. Since October 4, 2013, emissions of SO₂ from the River Rouge Facility have been subject to the Nonattainment NSR requirements in Part 19 of the Michigan SIP, including the requirements for major modifications of existing major sources in nonattainment areas.
40. Effective August 29, 2013, EPA designated Wayne County as attainment for PM_{2.5}. 78 *Fed. Reg.* 53272 (Aug. 29, 2013).
41. Since August 29, 2013, emissions of PM_{2.5} from the River Rouge Facility have been subject to the PSD requirements in Part 18 of the Michigan SIP, including the requirements for major modifications of existing major sources in attainment areas.

Factual Background

42. On June 13, 2014, NTH Consultants, Ltd., on behalf of EES Coke and DTE, submitted a permit to install application pursuant to Mich. Admin Code R. 336.1201 requesting to eliminate daily and annual coke oven gas heat input limits, as well as multiple other changes. The application projected that emissions from the modifications would not cause a significant increase in SO₂ emissions. Specifically, EES Coke and DTE projected that emissions from its facility would not exceed 3,118 tpy of SO₂ and determined that the amount of SO₂ that it could have accommodated was 3,097.5 tpy.
43. On August 28, 2014, NTH Consultants, Ltd., on behalf of EES Coke and DTE, submitted to the Michigan Department of Environmental Quality (MDEQ)¹ via email an updated analysis of the baseline, projected, and “could have been accommodated” emissions after discussions with MDEQ about its initial submittal. The August 28, 2014 analysis determined that baseline emissions of SO₂ were 2039.4 tpy, projected emissions were 3,117 tpy, and emissions that could have been accommodated remained unchanged at 3,097.5 tpy. The analysis determined that the projected increase in SO₂ emissions was 19.54 tpy.
44. On November 21, 2014, MDEQ issued PTI 51-08C to the River Rouge Facility. The permit considered the project to be a minor modification for SO₂ based on the August 28, 2014 projection that SO₂ emissions would not significantly increase and therefore not cause a major modification for SO₂. The permit did not require BACT or LAER for SO₂, nor did EES Coke or DTE obtain offsets for SO₂.
45. The River Rouge Facility’s actual SO₂ emissions have exceeded its baseline emissions, projected emissions, and emissions which could have been accommodated as follows:

12-Month rolling period			Facility-wide SO ₂ (tpy, rolling 12 mos)	Increase in SO ₂ vs. baseline (tpy, rolling 12 mos)	Increase in SO ₂ vs. projected (tpy, rolling 12 mos)	Increase in SO ₂ vs. COA (tpy, rolling 12 mos)
Jan-18	To	Dec-18	3,272.8	1,233.4	155.8	175.3
Feb-18	To	Jan-19	3,337.6	1,298.2	220.6	240.1
Mar-18	To	Feb-19	3,372.6	1,333.2	255.6	275.1
Apr-18	to	Mar-19	3,409.6	1,370.2	292.6	312.1
May-18	to	Apr-19	3,590.5	1,551.1	473.5	493.0
Jun-18	to	May-19	3,609.6	1,570.2	492.6	512.1
Jul-18	to	Jun-19	3,516.3	1,476.9	399.3	418.8
Aug-18	to	Jul-19	3,467.9	1,428.5	350.9	370.4
Sep-18	to	Aug-19	3,427.1	1,387.7	310.1	329.6
Oct-18	to	Sep-19	3,346.8	1,307.4	229.8	249.3
Nov-18	to	Oct-19	3,275.7	1,236.3	158.7	178.2

¹ MDEQ is now known as the Michigan Department of Environment, Great Lakes, and Energy.

Dec-18	to	Nov-19	3,235.2	1,195.8	118.2	137.7
Jan-19	to	Dec-19	3,193.3	1,153.9	76.3	95.8
Feb-19	to	Jan-20	3,219.7	1,180.3	102.7	122.2
Mar-19	to	Feb-20	3,176.6	1,137.2	59.6	79.1
Apr-19	to	Mar-20	3,109.6	1,070.2	No increase	12.1
May-19	to	Apr-20	2,998.2	958.8	No increase	No increase
Jun-19	to	May-20	2,884.1	844.7	No increase	No increase
Jul-19	to	Jun-20	2,896.6	857.2	No increase	No increase
Aug-19	to	Jul-20	2,793.2	753.8	No increase	No increase
Sep-19	to	Aug-20	2,697.5	658.1	No increase	No increase
Oct-19	to	Sep-20	2,549.1	509.7	No increase	No increase
Nov-19	to	Oct-20	2,350.7	311.3	No increase	No increase
Dec-19	to	Nov-20	2,173.7	134.3	No increase	No increase
Jan-20	to	Dec-20	2,107.7	68.3	No increase	No increase
Feb-20	to	Jan-21	2,101.4	62.0	No increase	No increase
Mar-20	to	Feb-21	2,111.1	71.7	No increase	No increase
Apr-20	to	Mar-21	2,113.2	73.8	No increase	No increase
May-20	to	Apr-21	2,173.4	134.0	No increase	No increase
Jun-20	to	May-21	2,288.9	249.5	No increase	No increase
Jul-20	to	Jun-21	2,401.9	362.5	No increase	No increase
Aug-20	to	Jul-21	2,623.7	584.3	No increase	No increase
Sep-20	to	Aug-21	2,863.5	824.1	No increase	No increase
Oct-20	to	Sep-21	3,115.3	1,075.9	No increase	17.8
Nov-20	to	Oct-21	3,359.2	1,319.8	242.2	261.7
Dec-20	to	Nov-21	3,558.4	1,519.0	441.4	460.9
Jan-21	to	Dec-21	3,608.4	1,569.0	491.4	510.9
Feb-21	to	Jan-22	3,531.40	1,492.00	414.4	433.9
Mar-21	to	Feb-22	3,521.50	1,482.10	404.5	424.0
Apr-21	to	Mar-22	3,537.70	1,498.30	420.7	440.2
May-21	to	Apr-22	3,516.40	1,477.00	399.4	418.9
Jun-21	to	May-22	3,493.80	1,454.40	376.8	396.3
Jul-21	to	Jun-22	3,449.80	1,410.40	332.8	352.3
Aug-21	to	Jul-22	3,372.30	1,332.90	255.3	274.8
Sep-21	to	Aug-22	3,266.10	1,226.70	149.1	168.6
Oct-21	to	Sep-22	3,155.90	1,116.50	38.9	58.4
Nov-21	to	Oct-22	3,064.90	1,025.50	No increase	No increase
Dec-21	to	Nov-22	3,012.80	973.40	No increase	No increase
Jan-22	to	Dec-22	2,953.30	913.90	No increase	No increase

46. On November 20, 2020, EES Coke submitted a report to the Michigan Department of Environment, Great Lakes, and Energy, reporting that the calendar year 2018 and 2019 actual

emissions differed from the preconstruction projection and exceeded the baseline actual emissions by a significant amount for SO₂, a regulated new source review pollutant.

Violations

47. The violations alleged herein are substantively the same as the violations alleged against EES Coke Battery, LLC in the September 15, 2020 Notice of Violation. The purpose of this Notice of Violation is to identify the DTE corporate entities in Paragraph 36 as additional owners/operators of the River Rouge Facility.
48. As described above, commencing on December 31, 2018, and continuing through at least September 30, 2022, the River Rouge Facility's actual emissions of SO₂ increased more than 40 tpy over the SO₂ baseline emissions, projected emissions, and emissions which could have been accommodated. Therefore, the project has caused a significant emissions increase and significant net emissions increase of SO₂, thus making the project a major modification for SO₂ under the nonattainment new source review requirements in the federally-approved Michigan SIP. Mich. Admin. Code R. 336.2902(5)(b).
49. Neither EES Coke nor DTE have applied for or obtained any permits containing the necessary nonattainment new source review requirements for SO₂ (including installation of LAER), nor have they obtained emission offsets for their projects.
50. EES Coke and DTE's failure to apply LAER to control emissions of SO₂ from underfire combustion at the coke oven battery prior to commencement of operation after construction of the major modification at the coke oven battery is a violation of the federally-approved Michigan SIP at Mich. Admin. Code R. 336.2908(3).
51. EES Coke and DTE's failure to obtain offsets for SO₂ prior to starting up after a major modification to the coke oven battery is a violation of the federally-approved Michigan SIP at Mich. Admin. Code R. 336.2908(5).
52. The significant emissions increase and significant net emissions increase of SO₂ identified above also make the project a major modification for PM_{2.5} (for which SO₂ is a precursor) under the PSD requirements in the federally-approved Michigan SIP. Mich. Admin. Code R. 336.2818.
53. Neither EES Coke nor DTE have applied for or obtained any permits containing the necessary PSD requirements for PM_{2.5} (including installation of BACT for SO₂).
54. EES Coke and DTE's failure to apply BACT to control emissions of SO₂ (as a precursor for PM_{2.5}) from underfire combustion at the coke oven battery prior to commencement of operation after construction of the major modification at the coke oven battery is a violation of the federally-approved Michigan SIP at Mich. Admin. Code R. 336.2810(3).
55. EES Coke and DTE's failure to conduct a source impact analysis, air quality analysis, and additional impact analyses for PM_{2.5} prior to starting up after a major modification to the coke oven battery is a violation of the federally-approved Michigan SIP at Mich. Admin. Code R. 336.2811, 336.2813, and 336.2815.

56. EES Coke and DTE's late submission of reports after the 2019 and 2020 calendar year emissions exceeded baseline emissions by a significant amount and differed from the preconstruction projection is a violation of the federally-approved Michigan SIP at Mich. Admin. Code R. 336.2902(6)(e).

Environmental Impact of Violations

57. These violations have caused excess emissions of SO₂. Current scientific evidence links short-term exposures to SO₂, ranging from 5 minutes to 24 hours, with an array of adverse respiratory effects including bronchoconstriction and increased asthma symptoms.
58. SO₂ is a precursor to PM_{2.5}. Particulate matter, especially fine particulates, contains microscopic solids or liquid droplets, which can get deep into the lungs and cause serious health problems. Particulate matter exposure contributes to:
- irritation of the airways, coughing, and difficulty breathing;
 - decreased lung function;
 - aggravated asthma;
 - chronic bronchitis;
 - irregular heartbeat;
 - nonfatal heart attacks; and
 - premature death in people with heart or lung disease.

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