March 30, 2016

By Certified Mail-Return Receipt Requested

Jerry Forte
Chief Executive Officer
Colorado Springs Utilities
PO Box 1103
Colorado Springs, CO 80947

Andy Pico
Chair
Colorado Springs Utilities Board
PO Box 1103
Colorado Springs, CO 80947

Tom Strand
Vice Chair
Colorado Springs Utilities Board
PO Box 1103
Colorado Springs, CO 80947

Larry Bagley, Merv Bennett, Helen Collins, Jill Gaebler, Keith King, Don Knight, and Bill Murray
Members
Colorado Springs Utilities Board
PO Box 1103
Colorado Springs, CO 80947

Re: Martin Drake Coal-Fired Power Plant Clean Air Act Violations

Dear Messrs. Forte, Pico, Strand, and members of the Colorado Springs Utilities Board:

Pursuant to the Clean Air Act, 42 U.S.C. § 7604(b)(1), this letter serves as notice that WildEarth Guardians intends to sue you and Colorado Springs Utilities for significant and ongoing violations of the Clean Air Act at the coal-fired Martin Drake Power Plant ("Martin Drake") located at 700 South Conejos St. in Colorado Springs, Colorado. Specifically, Units 5, 6, and 7 have repeatedly violated opacity monitoring requirements under federal law as described below. In the last five years, Colorado Springs Utilities has failed to ensure continuous opacity monitoring for these units for nearly 19,000 minutes.[1]

Under the Clean Air Act, 42 U.S.C. § 7604(a)(1), citizens are entitled to bring suit to enjoin violations of an "emission standard or limitation", and to seek civil penalties for such violations. An "emission standard or limitation" is defined as: (1) "a schedule or timetable of compliance, emission limitation, standard of performance or emissions standard, … or (4) any other standard, limitation or schedule established under any permit issued pursuant to subchapter V of this chapter or under any applicable State implementation plan approved by the administrator." 42 U.S.C. §§ 7604(f)(1) and (4). WildEarth Guardians intends to bring suit to

[1] *See* Exhibit A.

enjoin violations of applicable federal regulations regarding the monitoring of opacity, as well as violations of the Martin Drake Title V permit, and will seek civil penalties for such violations.

It is estimated that at least 3,155 violations of opacity monitoring requirements have occurred in the last five years and that these violations are ongoing. Under the Clean Air Act, penalties of up to $37,500 per day per violation are provided to deter future violations. *See* 74 Fed. Reg. 626 (Jan. 7, 2009). Colorado Springs Utilities faces more than $118 million in penalties due to its violations of the Clean Air Act.

I. The Martin Drake Plant

The Martin Drake is a coal-fired, steam-electric generating station with three operating boiler units, Units 5, 6, and 7. Unit 5 was constructed in 1962, followed by Unit 6 in 1968 and Unit 7 in 1974. In total, the units are capable of generating 278 megawatts of electricity. The units are fired by coal, although they are all three capable of being fired with natural gas. These units are the primary source of air pollution at the Martin Drake plant, with their emissions released from stacks that stand more than 200 feet tall. In addition to the three stacks, air pollution at the plant is released from coal and ash handling and cooling towers.[2]

The Martin Drake plant releases nearly two million tons of toxic air pollution. According to data submitted by Colorado Springs Utilities to the U.S. Environmental Protection Agency ("EPA"), in 2015 the plant released 3,959 tons of sulfur dioxide, 2,136 tons of nitrogen oxides, 1,804,253 tons of carbon dioxide, and more than 26 tons of hazardous air pollutants, including barium compounds, dioxins, hydrofluoric acid, hydrochloric acid, mercury compounds, and lead compounds.[3]

Hazardous Air Pollutants Released from Martin Drake Power Plant

Hazardous Air Pollutant	Pounds Released into the Air in 2014
Barium compounds	159
Dioxins	1.1451 grams
Hydrochloric acid	7,900 (reported for 2013)
Hydrofluoric acid	53,000
Lead compounds	3.1
Mercury compounds	31

Sulfur dioxide is a harmful byproduct of coal combustion that can cause an array of adverse respiratory effects.[4] Nitrogen oxides are also a byproduct of fossil fuel combustion and

[2] More information on the Martin Drake Power Plant and its air pollution sources can be found in the Technical Review Document prepared by the Colorado Air Pollution Control Division in 2002 in conjunction with the issuance of the facility's Title V Operating Permit under the Clean Air Act. This Technical Review Document is attached as Exhibit B and is available online at https://drive.google.com/folderview?id=0B0tmPQ67k3NVYTdBeUlTbEI5clk&usp=sharing&tid=0B0tmPQ67k3NVUXY0b0pmaGlCS3M.

[3] Data on emissions from the Martin Drake Power Plant can be queried through EPA's Air Markets Program Database, https://ampd.epa.gov/ampd/#?bookmark=15142, and Enforcement and Compliance History Online Database, https://echo.epa.gov/detailed-facility-report?fid=110009559637.

[4] EPA, "Sulfur Dioxide: Health," website available at https://www3.epa.gov/airquality/sulfurdioxide/health.html.

are similarly linked to a range of negative respiratory impacts.[5] Both sulfur dioxide and nitrogen oxides contribute to haze, fine particulate matter, and acid precipitation.[6] Nitrogen oxides also contribute to the formation of ground-level ozone, a poisonous gas that poses myriad health risks.[7]

WildEarth Guardians is concerned with opacity emissions from Units 5, 6, and 7 at Martin Drake. The EPA explains that opacity is:

> [A] measure of the amount of light attenuated by particulate matter in effluent emissions. The percentage of visible light attenuated is defined as the opacity of the emissions. Transparent stack emissions that do not attenuate light will have a transmittance of 100 percent or an opacity of zero percent. Opaque stack emissions that attenuate all of the visible light will have a transmittance of zero percent or an opacity of 100 percent. Opacity often is used as an indicator of the degree of particulate matter emissions.[8]

Opacity is also a convenient surrogate for assessing emissions of other pollutants, particularly particulate matter, and are used as a means to assure effective emissions controls.[9] In order to analyze opacity emissions from stacks, continuous opacity monitors are often utilized to measure emissions. Continuous opacity monitors within a smokestack pass a beam of light from one side of each Unit's stack across the exhaust path to a reflector that returns light to the opacity sensor.[10] The opacity reading then reflects the "degree to which emissions reduce the transmission of light and obscure the view of an object in the background."[11] Therefore, opacity violations indicate excess emissions of particulate matter, which can include soot, mercury particles, and condensed acid gases.

II. The Clean Air Act Violations

a. Opacity Limitations Applicable to Martin Drake

Emissions from Martin Drake are subject to opacity limits. First, the Colorado SIP states that Martin Drake must not cause emission into the atmosphere of any air pollutant which is in excess of 20% opacity for any six minute period.[12] However, during the building of a new fire, cleaning of fire-boxes, soot blowing, start-up, any process modification, or adjustment or occasional cleaning of control equipment, an owner or operator may allow emissions of an air pollutant in excess of 30% for a period or periods aggregating more than six minutes in any sixty

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[5] EPA, "Nitrogen Dioxide: Health," website available at https://www3.epa.gov/airquality/nitrogenoxides/health.html.
[6] EPA, "Fine Particle Designations: Basic Information," website available at https://www3.epa.gov/pmdesignations/basicinfo.htm.
[7] EPA, "Health Effects of Ozone Pollution," website available at https://www.epa.gov/ozonepollution/health-effects-ozone-pollution.
[8] EPA, "Monitoring Knowledge Base: Basic Information," website available at https://cfpub.epa.gov/oarweb/mkb/basic_information.cfm.
[9] *Id. See also WildEarth Guardians v. Public Service Company of Colorado*, 853 F.Supp.2d 1086, 1088 (2012).
[10] *Sierra Club v. Public Service Company of Colorado Inc.*, 894 F.Supp. 1455, 1457 (D. Colo. 1995).
[11] *Id.*
[12] "Emission Control Regulations for Particulates Smokes Carbon Monoxide and Sulfur Oxides for the State of Colorado" *Smoke and Opacity*, 68 Fed. Reg. 4933 (Jan. 31, 2003).

consecutive minute.[13] Martin Drake is also subject to opacity limits set forth in the facility's Title V Operating Permit, which was first issued by the Colorado Air Pollution Control Division in 2002 pursuant to Title V of the Clean Air Act.[14] The Title V Operating Permit limits the opacity of emissions in a manner identical to the terms of the Colorado SIP discussed above.

Pursuant to Martin Drake's Title V Operating Permit, Colorado Springs Utilities is required to monitor opacity using continuous opacity monitors.[15] According to the permit, Colorado Springs Utilities "shall ensure that all continuous [] opacity monitoring systems required are in operation and monitoring unit [] opacity at all times that the boiler combusts any fuel[.]"[16] This requirement echoes federal regulations and the statutory requirements of the Clean Air Act. Indeed, 40 C.F.R. § 75.10 requires that opacity from Martin Drake must be monitored by installing, certifying, operating, and maintaining "a continuous emission opacity monitoring system."[17] The only allowable exceptions to these continuous opacity monitoring requirements are during "periods of calibration, quality assurance, or preventative maintenance, performed pursuant to [40 C.F.R.] Sec. 75.21 and appendix B of this part [75], periods of repair, periods of backups of data from the data acquisition and handling system, or recertification performed pursuant to [40 C.F.R.] Sec. 75.20."[18] These exceptions are also set forth verbatim in Martin Drake's Title V Operating Permit.[19]

b. Continuous Opacity Monitor Downtime Violations

Here, in spite of Colorado Springs Utilities' duty to continuously monitor opacity at Martin Drake, there have been numerous instances of inappropriate and illegal opacity monitor downtime. Based on a review of certified quarterly excess emission reports for Units 5, 6, and 7 submitted by Colorado Springs Utilities to the Colorado Air Pollution Control Division, in the last five years (i.e., since April 1, 2011), there have been 18,930 minutes of unacceptable opacity monitor downtime.[20] Although there have been many minutes of opacity monitor downtime for legitimate, legally allowed reasons, including calibration, quality assurance, and preventative maintenance, Colorado Springs Utilities own records show numerous instances of monitor downtime for unacceptable reasons, including, but not limited to:

- Calibration test started by error;
- Received opacity monitor system fault alarm;

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[13] *Id.*

[14] The Title V Operating Permit for Martin Drake (Operating Permit No. 95OPEP107) is attached as Exhibit C and available online at https://drive.google.com/folderview?id=0B0tmPQ67k3NVYTdBeUlTbEI5clk&usp=sharing&tid=0B0tmPQ67k3NVUXY0b0pmaGlCS3M.

[15] Title V Operating Permit at Condition 7.1.1.

[16] Title V Operating Permit at Condition 7.2.1.

[17] 40 C.F.R. § 75.10(a)(4); *see also* 42 U.S.C. § 7651k(a) (a source subject to Title IV "shall be required to install and operate CEMS [continuous emission monitoring systems] on each affected unit at the source, and to quality assure the data for…opacity"). Further, "the owner or operator ***must ensure that all continuous emission and opacity monitoring systems required by this part are in operation and monitoring unit emissions or opacity at all times that the unit combusts any fuel.***" 40 C.F.R. § 75.10(d) (emphasis added).

[18] *Id*.

[19] Title V Operating Permit at Condition 7.2.1.

[20] All excess emission reports documenting unacceptable monitor downtime are attached as Exhibit D.

- Received opacity bad status alarm. Window limit reached due to moisture condensation;
- Received out of control alarms for opacity instrument due to calibration error test failed; and
- Stack tester probe obstructed opacity monitor light path during RATA test.

Attached as Exhibit A is a spreadsheet documenting every instance of unacceptable opacity monitor downtime at Martin Drake. The spreadsheet is based on Colorado Springs Utilities' own quarterly excess emission reports and present the date of the downtime, the time, the total minutes of the downtime, and the reason for downtime stated by Colorado Springs Utilities. For Unit 5, Colorado Springs Utilities reports a total of 4,242 minutes of downtime, for Unit 6, 1,098 minutes of downtime, and for Unit 7, 13,590 minutes of downtime. In several cases, monitor downtime occurred for more than one day. In total, downtime reported by Colorado Springs Utilities amounts to 18,930 minutes, or more than 300 hours. Because opacity is measured on a six-minute basis, every six minutes of continuous opacity monitor downtime represents one violation. Given this, a total of 3,155 violations of the Clean Air Act have occurred at Martin Drake in the last five years.

Continuous Opacity Monitor Downtime Violations at Martin Drake Since April 1, 2011

Unit	Minutes of Opacity Monitor Downtime	Total Violations
5	4,242	707
6	1,098	183
7	13,590	2265

The failure of Colorado Springs Utilities to continuously monitor opacity as required by the Clean Air Act and the company's Title V Operating Permit means that the company has failed to demonstrate full compliance with applicable opacity limits at Martin Drake. This raises serious concerns over whether Colorado Springs Utilities is appropriately limiting emissions to protect public health and the community of Colorado Springs.

These violations of opacity monitoring requirements constitute a violation of both "a schedule or timetable of compliance, emission limitation, standard of performance or emissions standard" and "a standard, limitation or schedule established under any permit issued pursuant to [Title] V of [the Clean Air Act." Further, these violations have occurred consistently over the last five years and appear to be a continuing occurrence at Martin Drake. Inappropriate monitor downtime was reported as recently as mid-December of 2015 and we believe Colorado Springs Utilities will report that further unacceptable opacity monitor downtime occurred during the first quarter of 2016.

Citizens can therefore enforce Colorado Springs Utilities' violations of the Clean Air Act in federal court. Accordingly, if the aforementioned violations are not remedied and if Colorado Springs Utilities fails to ensure compliance with the Clean Air Act moving forward, WildEarth Guardians intends to file suit in federal court to enjoin these violations and ensure future compliance.

III. Conclusion

Colorado Springs Utilities has been regularly violating opacity monitoring requirements at Martin Drake, contravening the Clean Air Act, Clean Air Act regulations and the company's Title V Operating Permit. These violations are ongoing.

Accordingly, WildEarth Guardians intends to file suit in federal court to enjoin the violations, obtain civil penalties for noncompliance, recover attorneys' fees and costs, and secure any other appropriate relief. Based on the violations documented so far, Colorado Springs Utilities faces civil penalties of more than $100 million due to its violations.

WildEarth Guardians contact information is listed below. If you have questions regarding the allegations, believe that any of the above information is in error, or would like to discuss a settlement of this matter prior to the initiation of litigation, please contact WildEarth Guardians at (303) 437-7663.

Sincerely,

Jeremy Nichols
Climate and Energy Program Director
WildEarth Guardians
2590 Walnut St.
Denver, CO 80205
(303) 437-7663
jnichols@wildearthguardians.org

cc (via priority mail, without exhibits):

Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, D.C. 20460

Shaun McGrath
Regional Administrator
U.S. Environmental Protection Agency Region 8
1595 Wynkoop St
Denver, CO 80202

John Hickenlooper
Governor
State of Colorado
136 State Capitol
Denver, CO 80203

Larry Wolk
Executive Director
Colorado Department of Public Health
and Environment
4300 Cherry Creek Drive South
Denver, CO 80246