

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. \_\_\_\_\_

WILDEARTH GUARDIANS,

Plaintiff,

v.

COLORADO SPRINGS UTILITIES BOARD,

Defendant.

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**COMPLAINT**

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**INTRODUCTION**

1. Plaintiff WildEarth Guardians (“Guardians”) brings this suit against the Colorado Springs Utilities Board (the “Board”) for multiple violations of continuous opacity monitoring requirements under the federal Clean Air Act, 42 U.S.C. §§ 7401-7671(q), at its 278-megawatt, coal-fired Martin Drake Power Plant (“Martin Drake”) in Colorado Springs, Colorado.

2. Between April 11, 2011 and December 13, 2015, Units 5, 6, and 7 at Martin Drake have repeatedly violated continuous opacity monitoring requirements through several unexcused periods of monitor downtime, resulting in a failure to ensure continuous opacity monitoring for these units for 18,930 minutes within this five-year period. Because opacity is measured on a six-minute basis, every six-minute downtime period of continuous opacity monitoring represents one violation. Using this metric, a total of 3,155 Clean Air Act violations have occurred at Martin Drake during this five-year period.

3. Opacity monitoring serves an important function in the operation of a power plant by indicating whether pollution control equipment is properly functioning and whether the plant is maintaining an emissions limit. The U.S. Environmental Protection Agency (“EPA”) considers opacity as a surrogate for assessing mass emissions and as a means to ensure effective particulate emissions control. Particulate matter emissions are important due to their numerous serious and adverse health effects, including increased respiratory symptoms such as irritation of the airways, coughing, or difficulty breathing; decreased lung function; aggravated asthma; development of chronic bronchitis; irregular heartbeat; nonfatal heart attacks; and premature death in people with heart or lung disease.<sup>1</sup> The Board’s violations of the Clean Air Act’s opacity monitoring requirements at Martin Drake pose a serious threat to public health due to their relationship to harmful particulate matter emissions.

4. The Board has violated and continues to violate the Clean Air Act and its implementing regulations, the Clean Air Act Title V operating permit for Martin Drake, and the Colorado State Implementation Plan (“SIP”). Guardians, a citizen group whose members are harmed by the Board’s Clean Air Act violations, asks the Court, pursuant to the Clean Air Act’s citizen suit provision, 42 U.S.C. § 7604(a), to: (1) declare that failure to continuously monitor opacity at Martin Drake violates the Clean Air Act; (2) order the Board to comply with all applicable opacity monitoring requirements; (3) order the Board to install additional opacity monitoring equipment sufficient to satisfy its opacity monitoring obligations, including, but not limited to, backup continuous opacity monitoring equipment; (4) enjoin the Board from operating Martin Drake until and unless its opacity monitoring equipment is functioning properly

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<sup>1</sup> See <https://www.epa.gov/pm-pollution/health-and-environmental-effects-particulate-matter-pm>. (last viewed December 4, 2016) and <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockkey=P1001EX6.txt> (last viewed December 6, 2016).

and continuously in compliance with applicable legal requirements; (5) assess civil penalties against the Board for its violations of the Clean Air Act; and (6) award Guardians its costs of litigation.

### **JURISDICTION AND VENUE**

5. This court has subject matter jurisdiction over this Clean Air Act citizen suit pursuant to 42 U.S.C. § 7604(a) and 28 U.S.C. § 1331 (federal question). The relief requested is authorized pursuant to 28 U.S.C. §§ 2201(a) and 2202, and 42 U.S.C. § 7604.

6. The Martin Drake Power Plant is located at 700 South Conejos Street, Colorado Springs, Colorado 80903. Pursuant to 42 U.S.C. § 7604(c), venue is proper in this District because Martin Drake is located in this District and violations have occurred and continue to occur in this District.

7. On March 30, 2016, Guardians provided Colorado Springs Utilities with notice of violations for the previous five years (beginning April 1, 2011), and provided notice of intent to sue. Guardians also provided notice to the EPA Administrator and to the State of Colorado pursuant to 42 U.S.C. § 7604(b). At least 60 days have elapsed since Guardians provided notice of the violations alleged in this Complaint. On information and belief, the violations alleged in this Complaint are ongoing. Neither EPA nor the State of Colorado have commenced or diligently prosecuted a civil action to redress these violations.

### **THE PARTIES**

8. Plaintiff WILDEARTH GUARDIANS is a nonprofit membership organization with over 200,000 members and activists throughout the United States, including approximately 483 members and activists in Colorado Springs where Martin Drake is located. Guardians and its members are dedicated to protecting and restoring the wildlife, wild places, wild rivers, and

health of the American West. To this end, Guardians works to reduce the adverse impacts of air pollution in the western United States, both to safeguard the broader environment and to protect public health.

9. Guardians' members live and recreate in the vicinity of Martin Drake and are harmed by the failure of the power plant to comply with its legally required air pollution monitoring requirements. Martin Drake is located right next to Fountain Creek and a popular bike path that Guardians' members utilize and enjoy. The smokestacks of Martin Drake also release air pollution that can often be seen and smelled by Guardians members living downwind, particularly in the foothills west of the power plant.

10. Air pollution from Martin Drake detracts from Guardians' members enjoyment of outdoor recreational activities in the vicinity of the power plant, detracts from the quality of life in Colorado Springs, and raises serious concerns and worry over the impacts of air pollution from the smokestacks to their health and well-being. Visible emissions detract from the natural scenery of the Colorado Springs area, particularly the mountain backdrop of the region, and are offensive to observe by Guardians' members.

11. The Board's failure to continuously monitor air pollution from the stacks of Martin Drake harms Guardians' members by denying them information and peace of mind regarding the health and environmental impacts of the power plant. Among the air pollutants released by Martin Drake are mercury, soot, sulfur gases, hydrochloric acid, and other heavy metals. Without proper continuous monitoring, there can be no guarantee that these pollutants are not being released at dangerous levels.

12. If the Board were to fully comply with its legally obligated air pollution monitoring requirements, Guardians' members would more fully enjoy the outdoors, their

quality of life, and worry less about the impacts of Martin Drake to their health. Legally compliant monitoring would ensure that Martin Drake is not exceeding opacity limits and is not releasing levels of other visible air pollutants above the legal limit.

13. Thus, Guardians and its members have a substantial interest in this matter and are adversely affected and aggrieved by the Board's failure to comply with the Clean Air Act. Guardians brings this action on behalf of itself and its adversely affected members. A decision requiring the Board to comply with all opacity monitoring requirements under Martin Drake's Title V permit and the Clean Air Act would redress these harms to Guardians and its members.

14. Defendant COLORADO SPRINGS UTILITIES BOARD owns and operates the Martin Drake Power Station where the violations that gave rise to this action occurred. The City of Colorado Springs is the parent entity of the Colorado Springs Utilities Board. The Board is a "person" within the meaning of Section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e).

## **LEGAL BACKGROUND**

### **The Clean Air Act**

15. Congress enacted the Clean Air Act "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of the population." 42 U.S.C. § 7401(b)(1). The Clean Air Act sets out a regulatory scheme designed to prevent and control air pollution.

16. Under Title I of the Clean Air Act, EPA promulgated National Ambient Air Quality Standards ("NAAQS"), which define the level of air quality necessary to protect the public health and welfare for certain "criteria pollutants," specifically sulfur dioxide, nitrogen oxides, particulate matter, carbon monoxide, lead, and ozone. 42 U.S.C. § 7409(a)-(b); 40 C.F.R. pt. 50.

17. The Clean Air Act provides for state implementation of minimum federal requirements through EPA-approved plans, known as State Implementation Plans (“SIPs”). 42 U.S.C. § 7410(a). SIPs provide for implementation, maintenance, and enforcement of the NAAQS in each state. All SIP provisions approved by EPA are federally enforceable. 42 U.S.C. § 7604(f)(4).

18. In 1990, Congress amended the Clean Air Act to add Title IV, known as the Acid Rain Program. This program seeks to reduce the impacts of acid deposition in the nation’s lakes, rivers and streams associated with air emissions of sulfur dioxide and nitrogen oxides, primarily from power plants. 42 U.S.C. § 7651. In addition to mandating reductions in these pollutants, Congress specifically imposed additional requirements on power plants to monitor, report, and maintain records associated with sulfur dioxide and oxides of nitrogen emissions, as well as for opacity as a surrogate of these pollutant emissions. *See* 42 U.S.C. § 7651k(a).

19. Section 412 of the Clean Air Act requires owners and operators of any source that is subject to Title IV to install and operate continuous emission monitoring systems (“CEMS”) “on each affected unit at the source, and to quality assure the data for sulfur dioxide, nitrogen oxides, opacity and volumetric flow at each such unit.” 42 U.S.C. §§ 7651k, 7651a(7). An affected unit is any emission unit at a major source that is subject to an emission reduction requirement or limitation under Title IV. 42 U.S.C. § 7651a(2).

20. Title IV further states that “[i]f CEMS data or data from an alternative monitoring system approved by the administrator . . . is not available for any affected unit during any period of a calendar year in which such data is required . . . and the owner or operator cannot provide information, satisfactory to the Administrator, on emissions during that period, the Administrator

shall deem the unit to be operating in an uncontrolled manner during the entire period for which the data was not available . . . .” 42 U.S.C. § 7651k(d).

21. EPA has promulgated regulations to implement Title IV of the Clean Air Act that are published in 40 C.F.R. Part 72.

22. In 1990, Congress also enacted Title V of the Clean Air Act to require all major sources of air pollution to obtain operating permits. *See* 42 U.S.C. § 7661b(a). A major source under Title V is defined as “any stationary source (or group of stationary sources located within a contiguous area and under common control) that . . . either: (A) [emits or has the potential to emit 10 tons or more of any hazardous air pollutant listed under Section 112 of the Act, or 25 tons or more of any combination of hazardous air pollutants (unless the EPA Administrator has identified a lesser quality for any particular hazardous air pollutant)] or (B) [emits or has the potential to emit one hundred tons per year as set forth in Section 302 or Part D of the Act].” 42 U.S.C. § 7661(2).

23. Section 502(b) of the Clean Air Act charged EPA with “establishing the minimum elements of a permit program to be administered by any air pollution control agency.” 42 U.S.C. § 7661a(b).

24. Each Title V permit issued pursuant to this program must “include enforceable emission limitations and standards . . . necessary to assure compliance with applicable requirements” of the Clean Air Act and the SIP. 42 U.S.C. § 7661c(a). Applicable requirement means “[a]ny standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the Act . . . [and] [a]ny standard or other requirement of the acid rain program under title IV of the Act or the regulations promulgated thereunder . . . .” 40 C.F.R. § 70.2.

25. Title V further states that the EPA administrator “may by rule prescribe procedures and methods for determining compliance and the monitoring and analysis of pollutants regulated by [the Clean Air Act].” 42 U.S.C. § 7661c(b). In doing so, however, Congress explicitly stated that “[n]othing in [Title V] shall be construed to affect any continuous emissions monitoring requirement of [the Title IV Acid Rain Program] . . . .” *Id.*

26. EPA has promulgated regulations to implement Title V of the Clean Air Act that are published in 40 C.F.R. Part 70.

27. In addition to the minimum requirements set forth under Titles I and IV of the Clean Air Act and its implementing regulations, state and local permitting authorities may supplement federal monitoring requirements in each permit with additional state requirements that will “assure compliance with the terms and conditions of the permit.” 40 C.F.R. § 70.6(c)(1). These requirements may include gap-filling provisions where the existing regulations are inadequate. These additional permitting requirements established by the state shall be “not inconsistent with” the Clean Air Act. 42 U.S.C. § 7661e(a).

28. The Clean Air Act specifically prohibits any permittee from violating any requirement of a Title V permit. 42 U.S.C. § 7661a(a).

29. The State of Colorado created a Title V operating permit program to which EPA gave final approval, effective on October 16, 2000. 65 Fed. Reg. 49,919 (Aug. 16, 2000); 40 C.F.R. pt. 70, App. A.

#### **Specific Clean Air Act Continuous Opacity Monitoring Requirements**

30. Opacity refers to the degree to which the transmittance of light is reduced by a specific air pollutant. An opacity value of 0% means that all light passes through, and an opacity of 100% means that no light can pass through.



31. When measuring opacity under Title IV, the CEMS are known as continuous opacity monitoring (“COM”) systems. The COM system monitors opacity by passing 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. The opacity reading reflects the “degree to which emissions reduce the transmission of light and obscure the view of an object in the background.” 40 C.F.R. § 60.2.

32. Pursuant to the Part 75 regulations promulgated under Title IV of the Clean Air Act, power plants must “install, certify, operate, and maintain, in accordance with all the requirements in this part, a continuous opacity monitoring system with the automated data acquisition and handling system for measuring and recording the opacity of emissions (in percent opacity) discharged to the atmosphere . . . .” 40 C.F.R. § 75.10(a)(4). Each COM system must be “capable of accurately measuring, recording, and reporting data . . . .” 40 C.F.R. § 75.10(f).

33. 40 C.F.R. § 75.10(d) requires owners and operators of power plants to “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 affected unit combusts any fuel” and during the time following combustion when fans are still operating. If a unit’s boiler is combusting any fuel, except as provided in 40 C.F.R. § 75.11(e) (special considerations during the combustion of gaseous fuels), the COM system may only be down “during periods of calibration, quality assurance, or preventive maintenance,” which must be performed pursuant to specific requirements set forth in Part 75, and during “periods of repair, periods of backups of data from the data acquisition and handling system, or recertification performed pursuant to § 75.20.” 40 C.F.R. § 75.10(d).

34. Downtime refers to the amount of time that the units are producing emissions, but the COM systems are not monitoring those emissions due to monitor or non-monitor failure.

During such periods, a COM system cannot provide usable data as to whether a unit is complying with applicable opacity requirements. Part 75 does not allow for COM system downtime in any other circumstance when a power-generating unit is combusting fuel.

35. Owners and operators must record opacity data and must “keep records of all incidents of opacity monitor downtime during unit operation, including reason(s) for the monitor outage(s) and any corrective action(s) taken for opacity, as measured and reported by the continuous opacity monitoring system.” 40 C.F.R. § 75.57(f).

### **Clean Air Act Citizen Suit Enforcement**

36. Under 42 U.S.C. § 7604(a), any person may file suit in federal district court against any “person” who is “alleged to have violated (if there is evidence that the alleged violation has been repeated) or to be in violation of (A) an emission standard or limitation under this chapter or (B) an order issued by the Administrator or a State with respect to such a standard or limitation.”

37. An “emission standard or limitation” is defined to include any “emission limitation, standard of performance, or emission standard” under the Clean Air Act, as well as any EPA-approved standard of performance or emission limitation under the SIP and any permit term or condition. 42 U.S.C. § 7604(f). Violations of Title V permit conditions are subject to a citizen enforcement action under 42 U.S.C. § 7604(a)(1).

38. 42 U.S.C. § 7413(b), amended in part by the Debt Collection Improvement Act of 1996, authorizes injunctive relief and civil penalties of up to \$37,500 per day for each violation occurring after January 12, 2009. 28 U.S.C. § 2461(a); 40 C.F.R. § 19.4; 74 Fed. Reg. 626 (Jan. 7, 2009).

## **FACTUAL BACKGROUND**

### **The Martin Drake Power Station**

39. The Board owns and operates Martin Drake and its three major coal-fired electric generating units—Units 5, 6, and 7. Unit 5 was constructed in 1962. Unit 6 was constructed in 1968. Unit 7 was constructed in 1974. In total, these three units are capable of generating 278 megawatts of electricity. The units are fired by coal. All three units are capable of being fired with natural gas.

40. Martin Drake is located in Colorado Springs, El Paso County, Colorado, a city of over 400,000 people. Martin Drake and its 200-foot tall smokestacks are approximately one mile east of Bear Creek Regional Park, eight miles north of Cheyenne Mountain State Park, and twenty miles from Pikes Peak. The power plant is just blocks from downtown Colorado Springs. Over 200,000 people live within five miles of Martin Drake, and over 400,000 people live within ten miles of the facility.

41. Each of Martin Drake’s coal fired boilers are: (1) subject to the requirements of Title I of the Clean Air Act; (2) affected units subject to the monitoring and reporting requirements of Title IV of the Clean Air Act; (3) regulated under the Colorado SIP; and (4) permitted by the State of Colorado under a permit issued under Title V.

42. The Colorado Department of Public Health and Environment (“CDPHE”) issued Martin Drake’s Title V operating permit, Permit #95OPEP107 (“Permit”), on November 1, 2002. CDPHE issued a revised Title V permit on April 13, 2004.<sup>2</sup>

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<sup>2</sup> The Title V Operating Permit for Martin Drake (Operating Permit No. 95OPEP107) is available online at <https://drive.google.com/drive/folders/0B0tmPQ67k3NVYTdBeUITbEI5clk?tid=0B0tmPQ67k3NVUXY0b0pmaGICS3M>. (last visited Dec. 6, 2016)

**Martin Drake Permit Requirements: Opacity Monitoring**

43. Emissions from Martin Drake are subject to opacity limits. The Colorado SIP states that Martin Drake must not cause emission into the atmosphere of any air pollutant that is in excess of 20% opacity for any six-minute period.<sup>3</sup> 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 consecutive minutes.<sup>4</sup>

44. The opacity limits in the Colorado SIP are incorporated into Martin Drake's Title V Operating Permit.<sup>5</sup>

45. Martin Drake's Title V Operating Permit also incorporates the federal opacity monitoring requirements set forth in 40 C.F.R. Part 75.<sup>6</sup>

46. Pursuant to Martin Drake's Title V Operating Permit, the Board is required to monitor opacity using continuous opacity monitors.<sup>7</sup> According to the permit, the Board "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 . . . ."<sup>8</sup> The requirement at 40 C.F.R. § 75.10(a)(4), which is incorporated into the Title V permit, requires that opacity from Martin Drake must be monitored by installing, certifying, operating, and maintaining "a continuous opacity monitoring system." The regulation also requires that "the owner or operator

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<sup>3</sup> Colorado Regulation No. 1, § II.A.1 (5 CCR 1001-3). Available at <https://www.colorado.gov/pacific/sites/default/files/5-CCR-1001-3.pdf>. (last visited Feb. 8, 2017).

<sup>4</sup> *Id.* at § II.A.4.

<sup>5</sup> Title V Operating Permit at Conditions 8.1 & 8.2.

<sup>6</sup> Title V Operating Permit at Condition 7.4.1.

<sup>7</sup> Title V Operating Permit at Condition 7.1.1.

<sup>8</sup> Title V Operating Permit at Condition 7.2.1.

shall ensure that all continuous . . . opacity monitoring systems required by this part are in operation and monitoring unit . . . opacity at all times that the affected unit combusts any fuel.” 40 C.F.R. § 75.10(d).

47. 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.” 40 C.F.R. § 75.10(d). These exceptions are also set forth verbatim in Martin Drake’s Title V Operating Permit.<sup>9</sup>

#### **Opacity Monitoring History at Martin Drake**

48. There have been numerous instances of unexcused COMS downtime at Martin Drake.

49. Based on certified quarterly excess emission reports for Units 5, 6, and 7 at Martin Drake submitted by the Board to the Colorado Air Pollution Control Division, between April 1, 2011 and December 13, 2015, there have been 18,930 minutes of unexcused COMS downtime.<sup>10</sup> There appear to have been many minutes of COMS downtime for calibration, quality assurance, and preventative maintenance, which are permissible reasons for downtime under 40 C.F.R § 75.10(d). But the Board’s own records show numerous instances of COMS downtime for other reasons, including, but not limited to:

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

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<sup>9</sup> Title V Operating Permit at Condition 7.2.1.

<sup>10</sup> A spreadsheet documenting monitor downtimes that do not fit into one of the exceptions is attached to this Complaint as Exhibit A. This Exhibit is based on the Board’s own quarterly excess emission reports and presents the date of the downtime, the time, the total minutes of the downtime, and the reason for downtime stated by the Board.

- 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.

50. For Unit 5, the Board reports a total of 4,242 minutes of downtime. For Unit 6, the Board reports a total of 1,098 minutes of downtime. For Unit 7, the Board reports a total of 13,590 minutes of downtime. In several cases, COMS downtime occurred for more than one day. In total, the Board reported downtime totaling 18,930 minutes, or more than 300 hours.

51. In most cases, Martin Drake's opacity monitoring downtime, as reported in its excess emissions reports, does not fall within one of the limited downtime exceptions provided by law. *See* 40 C.F.R. § 75.10(d). Martin Drake's opacity monitoring downtime includes repeated monitor equipment and communication failures. These failures are not excusable under the Clean Air Act or the facility's Title V permit. In most cases, monitoring downtime in the five-year period is the result of similar and foreseeable malfunction events.

52. During this downtime, the Board is unable to determine whether the affected unit at the Martin Drake plant is in compliance with applicable opacity limits.

## **CLAIM FOR RELIEF**

### ***Violation of Continuous Opacity Monitoring Requirements***

53. Plaintiff incorporates the allegations in the preceding paragraphs as if set forth in full herein.

54. The Board has unlawfully operated Martin Drake and continues to do so by failing to continuously monitor opacity emissions, in violation of the continuous emission monitoring requirements set forth in Martin Drake's Title V operating permit, 40 C.F.R. Part 75, the Colorado SIP, and the Clean Air Act.

55. The Board has violated these continuous monitoring requirements with at least 18,930 minutes of known monitor downtime from April 11, 2011 to December 13, 2015.

56. Because opacity is measured on a six-minute basis, every six minutes of COMS downtime represents one violation. Under this metric, Martin Drake's 18,930 minutes of unexcused COMS downtime total 3,155 violations of the Clean Air Act's opacity monitoring requirement at Martin Drake.

57. Martin Drake's 18,930 minutes of downtime as reported does not fall within one of the limited downtime exceptions provided by Clean Air Act regulations. *See* 40 C.F.R. § 75.10(d). Martin Drake's downtime is unexcused because it includes repeated monitor equipment and communication failures. Most of the monitoring downtime during the period in question is the result of similar, foreseeable malfunction events.

58. The Board's violations of Martin Drake's continuous opacity monitoring requirements are repeated and likely to continue.

59. As a result of these ongoing monitoring violations at Martin Drake, the Board has violated and continues to violate Titles IV and V of the Clean Air Act, as well as applicable provisions of the Colorado SIP and Martin Drake's Title V permit. 42 U.S.C. §§ 7651k(a), 7661a(a); 40 C.F.R. pt. 75; 5 COLO. CODE REGS. § 1001-5 pt. C (Operating Permits).

#### **PRAYER FOR RELIEF**

WHEREFORE, based upon the allegations contained in the foregoing paragraphs, Guardians requests that this Court:

- A. Declare that the Colorado Springs Utility Board's failure to continuously monitor opacity at Martin Drake violates the Clean Air Act;
- B. Order the Colorado Springs Utilities Board to comply with opacity monitoring

requirements pursuant to the Clean Air Act, its Title V permit and all applicable state and federal regulations;

- C. Order the Colorado Springs Utilities Board to install appropriate equipment to prevent future opacity monitoring violations;
- D. Enjoin the Colorado Springs Utilities Board from operating its coal-fired boiler units at Martin Drake until its COM system equipment is functioning properly;
- E. Assess a civil penalty against the Colorado Springs Utilities Board of up to \$37,500.00 per day for each violation of the Clean Air Act and applicable regulations, as incorporated into Martin Drake's Title V permit;
- F. Award Plaintiff its cost and reasonable attorneys' fees incurred in initiating and prosecuting this action; and
- G. Grant such other relief as the Court deems just and proper.

Respectfully submitted on this 9th day of February 2017.

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## Exhibit A

### Downtime Violations for Martin Drake Power Plant

Continuous Opacity Monitor Downtime Reported by Colorado Springs Utilities, April 1, 2011-March 30, 2016						
Prepared by Jeremy Nichols, Wilderth Guardians, March 30, 2016						
Unit	Start Date	End Date	Start of Downtime	End of Downtime	Total Minutes	Reason
5	4/11/11	4/11/11	11:00:00	12:42:00	102	Received invalid alarms for opacity data due to chopper motor fault.
7	4/14/11	4/14/11	7:18:00	7:42:00	24	Stack tester probe obstructed opacity monitor light path during RATA testing.
7	4/14/11	4/14/11	9:42:00	9:48:00	6	Stack tester probe obstructed opacity monitor light path during RATA testing.
7	4/14/11	4/14/11	9:54:00	10:00:00	6	Stack tester probe obstructed opacity monitor light path during RATA testing.
5	8/1/11	8/2/11	19:36:00	8:54:00	798	Received system fault alarm for opacity data due to laser tube fault.
5	8/4/11	8/4/11	5:54:00	6:00:00	6	Calibration error test is invalid due to data logger fault.
5	9/1/11	9/1/11	12:00:00	15:54:00	234	DAHS computer time synchronizing fault.
6	9/1/11	9/1/11	12:00:00	16:00:00	240	DAHS computer time synchronizing fault.
7	9/1/11	9/1/11	12:00:00	16:00:00	240	DAHS computer time synchronizing fault.
7	10/5/11	10/5/11	5:48:00	5:54:00	6	Opacity monitor calibration sequence started by error.
5	11/5/11	11/5/11	6:48:00	6:54:00	6	Opacity monitor calibration sequence started by error.
5	11/6/11	11/6/11	6:48:00	6:54:00	6	Opacity monitor calibration sequence started by error.
7	12/10/11	12/10/11	6:36:00	6:42:00	6	Opacity monitor calibration sequence started by error.
7	12/21/11	12/21/11	4:18:00	4:24:00	6	Opacity monitor fault.
7	12/25/11	12/25/11	6:42:00	6:54:00	12	Opacity monitor calibration sequence started by error.
7	1/20/12	1/20/12	6:36:00	6:42:00	6	Opacity monitor calibration sequence started by error.
7	1/25/12	1/25/12	22:24:00	22:30:00	6	Opacity monitor fault.
7	2/5/12	2/5/12	21:48:00	21:54:00	6	Received system fault alarm for opacity monitor.
7	2/5/12	2/5/12	22:54:00	23:00:00	6	Received system fault alarm for opacity monitor.
7	2/8/12	2/8/12	3:30:00	3:36:00	6	Received system fault alarm for opacity monitor.
7	2/8/12	2/8/12	8:48:00	8:54:00	6	Received system fault alarm for opacity monitor.
7	2/21/12	2/21/12	5:54:00	6:06:00	12	Received system fault alarm for opacity monitor.
5	4/3/12	4/4/12	16:06:00	12:18:00	1212	Received system fault alarm for opacity monitor.
7	7/25/12	7/25/12	6:12:00	6:18:00	6	Calibration error test started by error.
7	10/7/12	10/7/12	9:34:00	9:30:00	6	Calibration error test started by error.
5	10/16/12	10/16/12	5:54:00	6:18:00	24	Received out of control alarms for opacity monitor due to calibration error test failed.
7	10/18/12	10/19/12	23:06:00	12:24:00	798	Received fault alarm for opacity monitor.
5	11/28/12	11/28/12	11:54:00	12:00:00	6	Calibration error test started by error.
7	2/21/13	2/21/13	8:12:00	8:18:00	6	Received maintenance limit alarms for opacity monitor due to calibration error test.
6	4/9/13	4/9/13	6:06:00	6:12:00	12	Received maintenance limit alarms for opacity monitor due to calibration error test.
7	4/9/13	4/9/13	6:06:00	6:12:00	6	Received maintenance limit alarms for opacity monitor due to calibration error test.
5	5/2/13	5/2/13	22:06:00	22:12:00	6	Received invalid data alarms for opacity monitor due to stack purge fault.
5	5/2/13	5/2/13	22:24:00	22:30:00	6	Received invalid data alarms for opacity monitor due to stack purge fault.
5	5/2/13	5/2/13	22:42:00	22:48:00	6	Received invalid data alarms for opacity monitor due to stack purge fault.
7	5/3/13	5/3/13	6:12:00	6:24:00	12	Calibration error test started by error.
5	6/14/13	6/14/13	22:00:00	22:24:00	24	Received invalid data alarms for opacity monitor due to stack purge fault.
7	7/11/13	7/11/13	6:12:00	6:24:00	12	Calibration error test started by error.
6	9/9/13	9/9/13	6:00:00	6:06:00	6	Received maintenance limit alarms for opacity monitor due to calibration error test.
6	9/13/13	9/13/13	12:12:00	12:18:00	6	Received bad status data alarms for opacity monitor due to system fault.
6	9/13/13	9/13/13	13:18:00	14:12:00	54	Received bad status data alarms for opacity monitor due to system fault.
6	9/16/13	9/16/13	5:54:00	6:06:00	12	Received out of control alarms for opacity monitor due to calibration error test.
7	9/16/13	9/16/13	6:12:00	6:24:00	12	Calibration error test started by error.
6	9/20/13	9/20/13	5:54:00	13:30:00	456	Received out of control alarms for opacity monitor due to calibration error test.
6	10/14/13	10/14/13	7:42:00	7:48:00	6	Calibration error test started by error.
6	11/4/13	11/4/13	7:00:00	7:00:00	6	Calibration error test started by error.
6	12/9/13	12/9/13	2:36:00	6:12:00	240	Received opacity monitor system fault alarm after a unit trip.
7	12/11/13	12/11/13	20:18:00	20:30:00	12	Calibration error test started by error.
7	12/11/13	12/11/13	8:00:00	8:06:00	6	Opacity data invalid due to testing contractor probe obstructing opacity monitor laser path.
7	12/16/13	12/16/13	8:00:00	8:06:00	102	Received opacity monitor system fault alarm after a unit trip.
7	12/23/13	12/23/13	15:36:00	17:18:00	102	Received opacity monitor system fault alarm after a unit trip.
5	1/3/14	1/4/14	22:48:00	1:42:00	2028	Received opacity monitor system fault alarm due to component failure.
7	1/5/14	1/6/14	6:06:00	15:54:00	2028	Received opacity monitor system fault alarm due to component failure.
7	1/9/14	1/9/14	8:48:00	11:18:00	150	Opacity monitor fault due to instrument out of alignment.
7	1/9/14	1/9/14	14:42:00	16:48:00	126	Opacity monitor fault due to instrument out of alignment.
7	1/10/14	1/10/14	7:24:00	8:42:00	78	Received out of control alarms for opacity monitor due to failed calibration error test.
7	1/11/14	1/11/14	1:36:00	6:18:00	282	Opacity monitor fault due to instrument out of alignment.
7	1/11/14	1/11/14	7:54:00	17:12:00	600	Opacity monitor fault due to instrument out of alignment.
7	1/12/14	1/12/14	0:06:00	1:48:00	102	Opacity monitor fault due to instrument out of alignment.

7	1/18/14	1/18/14	7:24:00	8:42:00	78	Received out of control alarms for opacity monitor due to failed calibration error test.
7	1/21/14	1/21/14	7:24:00	7:36:00	12	Received out of control alarms for opacity monitor due to failed calibration error test.
7	1/23/14	1/23/14	7:30:00	7:36:00	6	Received maintenance limit alarms for opacity monitor due to failed calibration error test.
7	1/25/14	1/25/14	7:12:00	7:24:00	12	Calibration error test started by error.
7	1/27/14	1/27/14	7:24:00	7:36:00	12	Received out of control alarms for opacity monitor due to failed calibration error test.
7	1/31/14	1/31/14	11:24:00	11:36:00	12	Received out of control alarms for opacity monitor due to failed calibration error test.
7	2/2/14	2/2/14	4:48:00	7:18:00	150	Received opacity monitor system fault alarm due to window compensation limit reached.
7	2/2/14	2/2/14	16:18:00	16:24:00	6	Received opacity monitor system fault alarm.
7	2/4/14	2/4/14	11:12:00	11:30:00	18	Received out of control alarms for opacity monitor due to failed calibration error test.
7	2/5/14	2/6/14	20:54:00	7:36:00	696	Received opacity monitor system fault alarm due to low chopper motor speed.
7	2/9/14	2/9/14	11:12:00	12:24:00	72	Received out of control alarms for opacity monitor due to failed calibration error test.
7	2/14/14	2/14/14	11:00:00	11:12:00	12	Received out of control alarms for opacity monitor due to failed calibration error test.
7	2/20/14	2/20/14	11:12:00	12:54:00	102	Received out of control alarms for opacity monitor due to failed calibration error test.
7	2/23/14	2/23/14	11:12:00	13:00:00	108	Received out of control alarms for opacity monitor due to failed calibration error test.
7	3/1/14	3/1/14	10:42:00	10:54:00	12	Received out of control alarms for opacity monitor due to failed calibration error test.
7	3/2/14	3/2/14	10:42:00	11:00:00	18	Received out of control alarms for opacity monitor due to failed calibration error test.
7	3/7/14	3/7/14	10:42:00	10:48:00	6	Received maintenance limit alarms for opacity monitor due to calibration error test.
7	3/8/14	3/8/14	11:00:00	11:06:00	6	Received maintenance limit alarms for opacity monitor due to calibration error test.
7	3/31/14	3/31/14	5:18:00	7:24:00	126	Received opacity monitor system fault alarm due to window compensation limit reached.
7	4/1/14	4/1/14	9:42:00	9:54:00	12	Received out of control alarms for opacity monitor due to failed calibration error test.
7	4/1/14	4/1/14	13:42:00	13:54:00	12	Received opacity monitor system fault alarm due to window compensation limit reached.
7	4/3/14	4/3/14	4:48:00	5:24:00	6	Received opacity monitor system fault alarm due to window compensation limit reached.
7	4/3/14	4/3/14	5:06:00	5:24:00	18	Received opacity monitor system fault alarm due to window compensation limit reached.
7	4/7/14	4/7/14	6:48:00	6:54:00	6	Received opacity monitor system fault alarm due to window compensation limit reached.
7	4/12/14	4/12/14	23:24:00	23:30:00	6	Calibration error test started by error.
7	4/13/14	4/13/14	14:48:00	15:06:00	18	Received opacity monitor system fault alarm due to window compensation limit reached.
7	4/15/14	4/15/14	18:18:00	18:30:00	12	Calibration error test started by error.
7	4/22/14	4/22/14	12:00:00	12:06:00	6	Calibration error test started by error.
7	4/27/14	4/27/14	9:42:00	10:06:00	24	Received out of control alarms for opacity monitor due to failed calibration error test.
6	6/27/14	6/27/14	6:00:00	9:00:00	180	Opacity monitor output unstable.
7	8/24/14	8/24/14	5:42:00	5:48:00	6	Calibration error test started by error.
7	9/1/14	9/1/14	2:48:00	2:54:00	6	Received opacity monitor system fault alarm.
7	10/3/14	10/3/14	17:18:00	18:30:00	72	Received opacity monitor system fault alarm.
7	10/7/14	10/7/14	23:24:00	23:30:00	6	Calibration error test started by error.
7	10/21/14	10/21/14	11:18:00	11:30:00	12	Calibration error test started by error.
7	1/3/15	1/3/15	17:42:00	17:48:00	6	Received opacity monitor system fault alarm.
7	1/3/15	1/3/15	18:00:00	18:18:00	18	Received opacity monitor system fault alarm.
6	1/13/15	1/13/15	15:18:00	15:24:00	6	Received opacity monitor system fault alarm.
6	1/26/15	1/26/15	17:36:00	17:48:00	12	Calibration error test started by error.
6	1/27/15	1/27/15	10:12:00	10:18:00	6	Calibration error test started by error.
6	1/27/15	1/27/15	10:42:00	10:54:00	12	Calibration error test started by error.
7	2/21/15	2/21/15	21:48:00	22:00:00	12	Received opacity monitor system fault alarm.
7	2/28/15	2/28/15	11:36:00	11:42:00	6	Opacity output unstable. Adjustment and recalibration.
6	3/2/15	3/2/15	21:42:00	21:48:00	6	Calibration error test started by error.
6	3/9/15	3/9/15	22:12:00	22:18:00	6	Calibration error test started by error.
6	3/10/15	3/10/15	3:24:00	3:30:00	6	Calibration error test started by error.
6	3/13/15	3/13/15	19:54:00	20:00:00	6	Calibration error test started by error.
5	3/17/15	3/17/15	10:00:00	10:06:00	6	Received calibration drift alarm.
5	3/20/15	3/20/15	15:00:00	15:12:00	6	Received opacity monitor system fault alarm. Window limit reached.
5	4/8/15	4/8/15	9:48:00	9:54:00	6	Received opacity maintenance limit alarm.
5	4/16/15	4/16/15	10:00:00	10:06:00	6	Received opacity maintenance limit alarm.
5	4/17/15	4/17/15	14:54:00	16:30:00	96	Received opacity bad status alarm. Window limit reached due to moisture condensation. Adjustment and recalibration to clear fault.
7	4/28/15	4/28/15	14:06:00	14:18:00	12	Data logger rebooted. Opacity monitor put into maintenance.
6	5/1/15	5/1/15	10:12:00	10:18:00	6	Calibration error test started by error.
7	5/4/15	5/5/15	16:24:00	7:00:00	876	Received opacity bad status alarm. Window limit reached due to moisture condensation. Adjustment and recalibration to clear fault.
7	5/5/15	5/5/15	2:42:00	2:48:00	6	Calibration error test started by error.
6	5/5/15	5/5/15	8:12:00	8:18:00	6	Calibration error test started by error.
7	5/5/15	5/5/15	7:00:00	8:00:00	60	Received out of control alarms for opacity instrument due to calibration error test failed. Adjustment and recalibration to clear fault.
7	5/5/15	5/6/15	8:06:00	12:00:00	1674	Opacity instrument output high after maintenance. Adjustment and calibration to clear fault.
7	5/6/15	5/6/15	12:00:00	13:26:00	36	Opacity instrument output high after maintenance. Adjustment and calibration to clear fault.
7	5/6/15	5/6/15	13:00:00	13:12:00	12	Received opacity bad status alarm. Window limit reached due to moisture condensation. Routine maintenance to clear fault.
5	5/7/15	5/7/15	16:06:00	16:36:00	30	Opacity instrument output high due to moisture condensation on optical surfaces. Adjustment and recalibrate to clear fault.

5	5/8/15	5/8/15	7:18:00	9:42:00	144	Received opacity bad status alarm. Window limit reached due to moisture condensation. Adjustment and recalibration to clear fault.
7	5/8/15	5/8/15	6:42:00	6:42:00	6	Received opacity bad status alarm. Window limit reached due to moisture condensation. Adjustment and recalibration to clear fault.
7	5/8/15	5/9/15	18:18:00	9:42:00	924	Opacity instrument output high due to contractor interference with transmitter. Cleared obstruction from transmitter to clear fault.
5	5/9/15	5/9/15	14:30:00	15:18:00	48	Received opacity bad status alarm. Window limit reached due to moisture condensation. Adjustment and recalibration to clear fault.
7	5/9/15	5/10/15	9:42:00	9:48:00	1446	Received out of control alarms for opacity instrument due to calibration error test failed.
7	5/10/15	5/11/15	9:48:00	7:00:00	1272	Opacity instrument output high after calibration error test.
7	5/11/15	5/11/15	7:00:00	8:12:00	72	Opacity instrument output high after maintenance. Adjustment and recalibration to clear fault.
5	5/12/15	5/12/15	16:06:00	18:00:00	114	Received opacity bad status alarm. Window limit reached due to moisture condensation. Adjustment and recalibration to clear fault.
5	5/12/15	5/12/15	18:06:00	18:18:00	12	Received calibration drift alarm.
5	5/18/15	5/18/15	9:42:00	10:06:00	24	Received opacity out of control alarm. Adjustment and recalibration to clear fault.
7	5/18/15	5/19/15	23:00:00	1:00:00	120	Received opacity bad status alarm. Window limit reached due to moisture condensation. Routine maintenance to clear fault.
7	5/19/15	5/19/15	1:00:00	5:12:00	312	Opacity instrument output high due to moisture condensation on optical surfaces. Adjustment and recalibration to clear fault.
5	5/22/15	5/22/15	16:06:00	17:12:00	66	Received opacity bad status alarm. Window limit reached due to moisture condensation. Adjustment and recalibration to clear fault.
5	5/23/15	5/23/15	17:00:00	18:00:00	60	Received opacity bad status alarm. Window limit reached due to moisture condensation. Adjustment and recalibration to clear fault.
7	6/5/15	6/5/15	9:42:00	10:48:00	96	Received out of control alarms for opacity instrument due to calibration error test failed. Adjustment and recalibration to clear fault.
5	6/11/15	6/11/15	18:18:00	19:54:00	96	Received opacity bad status alarm. Window limit reached due to moisture condensation. Adjustment and recalibration to clear fault.
6	6/25/15	6/25/15	16:12:00	16:18:00	6	Calibration error test started by error.
5	7/9/15	7/10/15	19:06:00	7:30:00	744	Received opacity bad status alarm. Window limit reached due to moisture condensation.
5	9/1/15	9/1/15	16:24:00	18:12:00	108	Received opacity bad status alarm. Window limit reached due to moisture condensation.
6	9/1/15	9/1/15	13:42:00	13:48:00	6	Calibration error test started by error.
5	9/11/15	9/11/15	10:12:00	10:18:00	12	Calibration error test started in error.
7	10/29/15	10/29/15	9:06:00	9:18:00	6	Received opacity monitor maintenance limit alarm.
7	11/27/15	11/27/15	11:18:00	11:30:00	12	Calibration error test started in error.
6	12/4/15	12/4/15	13:42:00	13:48:00	6	Calibration error test started in error.
6	12/12/15	12/12/15	6:12:00	6:18:00	6	Calibration error test started in error.
6	12/12/15	12/12/15	18:42:00	18:48:00	6	Calibration error test started in error.
6	12/12/15	12/12/15	19:48:00	20:00:00	12	Calibration error test started in error.
6	12/13/15	12/13/15	18:18:00	18:30:00	12	Calibration error test started in error.
				<b>TOTAL MINUTES OF DOWNTIME</b>	<b>18930</b>	
				<b>TOTAL POTENTIAL VIOLATIONS</b>	<b>3155</b>	