



July 14, 2010

**BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Robert G. Schemahorn, Jr.
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200 North Second Street
Lamar, CO 81052

Rick Rigel
Superintendent, Lamar Utilities Board
Lamar Light and Power
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Lamar, CO 81052

William Leung
General Manager
Arkansas River Power Authority
PO Box 70
Lamar, CO 81052

Bob Freidenberger
Board President
Arkansas River Power Authority
PO Box 70
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Dear Messrs. Schemahorn, Rigel, Leung, and Freidenberger:

Pursuant to the citizen suit provision of the Clean Air Act, 42 U.S.C. § 7604(b)(1), WildEarth Guardians hereby provides notice that it intends to file suit against the Lamar Utilities Board d/b/a Lamar Light and Power (hereafter “LUB”) and the Arkansas River Power Authority (hereafter “ARPA”) over more than 1,000 violations of the Clean Air Act at the Lamar coal-fired electric generating unit, also known as the Lamar Repowering Project (hereafter “Lamar Plant”), located at 100 North Second Street, Lamar, CO 81052. In 60 days, or shortly thereafter, we intend to file suit against LUB and ARPA, and seek appropriate injunctive relief, declaratory relief, and other relief that may be provided necessary to remedy these ongoing violations. Pursuant to 40 C.F.R. § 54.2(c), this notice is being served via certified mail to the owner and/or managing agent of the Lamar Plant.

I. The Violations

According to data submitted by LUB and ARPA to the U.S. Environmental Protection Agency's ("EPA's") Clean Air Markets Division, the coal-fired circulating fluidized bed boiler at the Lamar Plant has regularly violated and continues to violate emission limits established in the October 13, 2009 construction permit issued by the Colorado Department of Public Health and Environment ("CDPHE") for construction and operation of the Lamar Plant. *See* Permit Number 05PR0027, Modification No. 2 (October 13, 2009). A copy of this Permit is hereby attached to this notice letter as Exhibit 1.

Permit number 05PR0027 was issued on October 13, 2009 by CDPHE pursuant to its authority under Air Quality Control Commission Regulation No. 3, 5 CCR 1001-5, which is incorporated into the federally enforceable Colorado State Implementation Plan ("SIP"), 40 C.F.R. § 52.320, *et seq.* These enforceable limits include annual and monthly limits for nitrogen oxide ("NO_x") and sulfur dioxide ("SO₂") emissions and emission rates for both NO_x, SO₂, and particulate matter ("PM") from the circulating fluidized bed boiler, also identified as AIRS Point ID. 004. According to the construction permit, these limits must be complied with when operating the Lamar Plant. Unfortunately, the Lamar Plant has violated and continues to violate its NO_x, SO₂, and PM limits.

These violations are especially disturbing in light of the adverse health effects associated with NO_x, SO₂, and PM. According to the EPA, NO_x can adversely affect respiratory health, lead to the formation of fine particle pollution that can cause premature death, aggravate heart disease, and lead to a host of other adverse respiratory health effects, and contribute to the formation of ground-level ozone, the key ingredient of smog. *See* <http://www.epa.gov/air/nitrogenoxides/health.html> (last visited July 1, 2010). Sulfur dioxide is also a respiratory irritant with studies showing short-term exposure can lead to increased visits to emergency rooms for respiratory illness. *See* <http://www.epa.gov/air/sulfurdioxide/health.html> (last visited July 1, 2010). Similar to NO_x, SO₂ can also form fine particle pollution. *Id.* Particulate matter is linked to a suite of health problems, including increased respiratory symptoms and difficulty breathing, decreased lung function, aggravated asthma, chronic bronchitis, irregular heartbeat, nonfatal heart attacks, and even premature death in people with heart or lung disease. *See* <http://www.epa.gov/air/particlepollution/health.html> (last visited July 1, 2010).

a. Violations of NO_x Limits

According to Permit Number 05PR0027, the NO_x emissions from the Lamar Plant coal-fired boiler are limited as follows:

Table 1. NO_x Emission Limits from Permit No. 05PR0027.

Standard	Limit	Permit Section	Method of Monitoring Compliance	Method of Assessing Compliance
Annual	205.0 tons	10	Continuous Emission Monitoring System ("CEMS")	Rolling 12-month average of monthly averages
Monthly	17.4 tons	10	CEMS	Average calculated each month
Emission Rate	0.5 lb/million Btus ("mmBtu")	7	CEMS	30-day rolling average
Emission Reduction	65%	7	CEMS	Met when 0.5 lb/mmBtu emission rate is achieved
Emission Rate	1.0 lb/megawatt-hour ("MWh")	7	CEMS	30-day rolling average

Based upon data submitted by LUB and ARPA to the EPA's Clean Air Markets Division and upon other data obtained by WildEarth Guardians, including, but not limited to, e-mail communications, CEMS data, and other credible evidence, LUB and ARPA has violated and continues to violate the annual and monthly NO_x emission limits, the NO_x emission rates, and the NO_x emission reduction requirements set forth in Permit Number 05PR0027 for the coal-fired boiler. These violations should come as no surprise. The Superintendent of the Lamar Utilities Board stated in a February 23, 2010 e-mail to a number of parties that, "[W]e are well above compliance limits [for NO_x]" and "We cannot continue to operate knowingly exceeding the NO_x requirements as we are now." This e-mail is attached to this notice letter as Exhibit 2.

i. Violations of Annual NO_x Limit

According to Permit Number 05PR0027, compliance with the 205.0 ton/year annual NO_x limit "shall be determined on a rolling (12) month total [with] a new twelve month total [] calculated based on the previous twelve months' data." Permit Number 05PR0027 at 8. Based on data submitted by LUB and ARPA to EPA's Clean Air Markets Division, the Lamar Plant violated the annual NO_x limit on April 30, 2010, May 31, 2010, and June 30, 2010, the Lamar Plant violated the annual limit on NO_x emissions and will continue to violate the limit at the end of every month at least until January 1, 2011, if not longer.

According to correspondence from the Superintendent of the Lamar Utilities Board, the Lamar Plant commenced operation on May 18, 2009, and therefore April 30, 2010 marked the date upon which the first twelve month total of emission data was available for purposes of determining compliance with the annual limit. According to emissions data from the Lamar Plant, the annual NO_x emissions amounted to at least 585.6 tons/year for the twelve month periods between May 18, 2009 and April 30, 2010, June 1, 2009 and May 31, 2010, and July 1, 2009 and June 30, 2010.¹ Based on emissions data collected so far at the Lamar Plant, the

¹ Data for the months of April 2010, May 2010, and June 2010 is currently not available to WildEarth Guardians. However, as this data becomes available, it will likely show higher annual NO_x emissions for the twelve month periods at issue in this notice letter and will certainly show ongoing violations of the annual limit.

facility is also on track to violate the annual NO_x limit at the end of the day on July 31, 2010, August 31, 2010, September 30, 2010, October 31, 2010, November 30, 2010, and December 31, 2010. Thus, although three violations have been recorded so far, at least six more will also be triggered as the plant continues to operate under its permit. Table 2 below displays monthly and annual NO_x emissions data obtained from EPA's Clean Air Markets Division. A copy of the Clean Air Markets daily emissions data is also attached to this notice letter as Exhibit 3.

Table 2. Monthly and Annual NO_x Emissions (in tons).

Date	Monthly Emissions	Annual Emissions	Twelve Month Period
May 2009	0		
June 2009	0		
July 2009	0		
August 2009	0		
September 2009	107.3		
October 2009	152.3		
November 2009	115.5		
December 2009	2.8		
January 2010	11.4		
February 2010	62		
March 2010	134.3		
April 2010	N/A		
May 2010	N/A	585.6	May 18, 2009-April 30, 2010
June 2010	N/A	585.6	June 1, 2009-May 31, 2010
July 2010		585.6	July 1, 2009-June 30, 2010
August 2010		585.6	Aug. 1, 2009-July 31, 2010
September 2010		585.6	Sep. 1, 2009-Aug. 31, 2010
October 2010		478.3	Oct. 1, 2009-Sep. 30, 2010
November 2010		326	Nov. 1, 2009-Oct. 31, 2010
December 2010		210.5	Dec. 1, 2009-Nov. 30, 2010
January 2011		207.7	Jan. 1, 2010-Dec. 31, 2010

ii. Violations of Monthly NO_x Limit

According to Permit Number 05PR0027, “the permit holder shall calculate monthly emissions[.]” Permit Number 05PR0027 at 8. The 17.4 ton monthly NO_x emission limit applies only “[d]uring the first twelve (12) months of operation.” *Id.* at 8. Based on data submitted by LUB and ARPA to EPA's Clean Air Markets Division, the Lamar Plant violated the monthly NO_x limit at least five out of its first twelve months of operation.

Monthly emissions data shows that the Lamar Plant violated the 17.4 ton monthly NO_x limit for the months of September 2009, October 2009, November 2009, February 2010, and March 2010. The Lamar Plant violated this monthly limit by more than eight-fold in the month of October 2009. Although data from April 2010 is not yet available to WildEarth Guardians, it is very likely that the Lamar Plant also violated the monthly NO_x limit during this month.

iii. Violations of 0.5 lb/mmBtu Emission Rate

Permit Number 05PR0027 states that the coal-fired boiler is subject to Clean Air Act New Source Performance Standards (“NSPS”) Subpart Da, 40 C.F.R. § 40Da, *et seq.* See Permit Number 05PR0027 at 5. The NSPS require that the NO_x emission rate at the Lamar Plant be limited to no more than 0.5 lb/mmBtu on a rolling 30-day average basis. See 40 C.F.R. § 44Da(a)(1).

According to data submitted by LUB and ARPA to the EPA’s Clean Air Markets Division, the Lamar Plant’s average NO_x emission rate was 0.74 lb/mmBtu at least between September 1, 2009 and March 31, 2010. This data indicates that the Lamar Plant’s NO_x emissions on a 30-day rolling average basis violated the 0.5 lb/mmBtu limit at least every day from October 1, 2009 to March 31, 2010 for a total of around 182 violations. Although emissions data from April 1, 2010 to the date of this letter is not currently available to WildEarth Guardians, it is very likely that the Lamar Plant violated the 0.5 lb/mmBtu limit during this time and that violations are ongoing.

iv. Violations of 65% Reduction Requirement

According to 40 C.F.R. § 60.48Da(b), compliance with the 0.5 lb/mmBtu NO_x emission rate “constitutes compliance with the [65%] reduction requirements under Sec. 60.44Da(a)(2). Thus, noncompliance with the 0.5 lb/mmBtu emission rate also indicates noncompliance with the 65% reduction requirement set forth at both 40 C.F.R. § 60.44Da(a)(2) and Condition 7 of Permit Number 05PR0027.

As already explained, the Lamar Plant violated the 0.5 lb/mmBtu emission limit on a 30-day rolling average basis at least on every day between October 1, 2009 and March 31, 2010 and likely violated the limit from April 1, 2010 to the date of this letter. Every day that the 0.5 lb/mmBtu limit was violated constitutes a violation of the 65% reduction requirement. Thus, the Lamar Plant violated the 65% reduction requirement at least on 182 occasions, and likely more.

v. Violations of 1.0 lb/MWh Emission Rate

Permit Number 05PR0027 states that the coal-fired boiler is subject to the NSPS requirement that the NO_x emission rate be limited to no more than 1.0 lb/MWh. See Permit Number 05PR0027 at 5 and 40 C.F.R. § 60.44Da(e)(1). The NSPS require that the 1.0 lb/MWh emission rate be met on a rolling 30-day average basis. See 40 C.F.R. § 44Da(e)(1).

According to data submitted by LUB and ARPA to the EPA’s Clean Air Markets Division and CEMS data from the Lamar Plant, the 1.0 lb/MWh NO_x emission rate was violated on a 30-day rolling average basis on every day between at least July 31, 2009 and March 31, 2010, for a total of 244 violations. Both Clean Air Markets Division data and CEMS data indicate that the 1.0 lb/MWh limit was violated by more than four-fold on all days. Although emissions data from April 1, 2010 to the date of this letter is not currently available to WildEarth Guardians, it is very likely that the Lamar Plant violated the 1.0 lb/MWh limit during this time and that violations are ongoing.

b. Violation of SO₂ Limits

According to Permit Number 05PR0027, the SO₂ emissions from the Lamar Plant coal-fired boiler are limited as follows:

Standard	Limit	Permit Section	Method of Monitoring Compliance	Method of Assessing Compliance
Annual	230.2 tons	10	CEMS	Rolling 12-month average of monthly averages
Monthly	19.6	10	CEMS	Average calculated each month
Emission Rate	1.4 lb/MWh	7	CEMS	30-day rolling average
Emission Rate	0.103 lb/mmBtu	4	CEMS	Daily average

According to data submitted to the EPA's Clean Air Markets Division and upon other data obtained by WildEarth Guardians, including, but not limited to, e-mail communications, CEMS data, and other credible evidence, LUB and ARPA have violated and continue to violate the annual and monthly SO₂ emission limits, the SO₂ emission rates, and the SO₂ emission reduction requirements set forth in Permit Number 05PR0027 for the coal-fired boiler.

i. Violations of Annual SO₂ Limit

According to Permit Number 05PR0027, compliance with the 230.2 ton/year annual SO₂ limit "shall be determined on a rolling (12) month total [with] a new twelve month total [] calculated based on the previous twelve months' data." Permit Number 05PR0027 at 8. Based on data submitted by LUB and ARPA to EPA's Clean Air Markets Division, the Lamar Plant violated the annual SO₂ limit on April 30, 2010, May 31, 2010, and June 30, 2010, the Lamar Plant violated the annual limit on NO_x emissions and will continue to violate the limit at the end of every month at least until January 1, 2011, if not longer.

According to correspondence from the Superintendent of the Lamar Utilities Board, the Lamar Plant commenced operation on May 18, 2009, and therefore April 30, 2010 marked the date upon which the first twelve month total of emission data was available for purposes of determining compliance with the annual limit. According to emissions data from the Lamar Plant, the annual SO₂ emissions amounted to at least 460.6 tons/year for the twelve month periods between May 18, 2009 and April 30, 2010, June 1, 2009 and May 31, 2010, and July 1, 2009 and June 30, 2010.² Based on emissions data collected so far at the Lamar Plant, the facility is also on track to violate the annual SO₂ limit by the end of the day on July 31, 2010, August 31, 2010, September 30, 2010, October 31, 2010, November 30, 2010, and December 31,

² Data for the months of April 2010, May 2010, and June 2010 is currently not available to WildEarth Guardians. However, as this data becomes available, it will likely show higher annual SO₂ emissions for the twelve month periods at issue in this notice letter and will certainly show ongoing violations of the annual limit.

2010. Thus, although three violations have been recorded so far, at least six more will also be triggered as the plant continues to operate under its permit. Table 3 below displays monthly and annual SO₂ emissions data obtained from EPA’s Clean Air Markets Division. A copy of the Clean Air Markets daily emissions data is also attached to this notice letter as Exhibit 3.

Table 3. Monthly and Annual SO₂ Emissions (in tons).

Date	Monthly Emissions	Annual Emissions	Twelve Month Period
May 2009	0		
June 2009	0		
July 2009	0		
August 2009	0		
September 2009	62.3		
October 2009	88.5		
November 2009	67.0		
December 2009	1.6		
January 2010	13.2		
February 2010	72.0		
March 2010	156.0		
April 2010	N/A		
May 2010	N/A	460.6	May 18, 2009-April 30, 2010
June 2010	N/A	460.6	June 1, 2009-May 31, 2010
July 2010		460.6	July 1, 2009-June 30, 2010
August 2010		460.6	Aug. 1, 2009-July 31, 2010
September 2010		460.6	Sep. 1, 2009-Aug. 31, 2010
October 2010		398.3	Oct. 1, 2009-Sep. 30, 2010
November 2010		309.8	Nov. 1, 2009-Oct. 31, 2010
December 2010		242.8	Dec. 1, 2009-Nov. 30, 2010
January 2011		241.2	Jan. 1, 2010-Dec. 31, 2010

ii. Violations of Monthly SO₂ Limit

According to Permit Number 05PR0027, “the permit holder shall calculate monthly emissions[.]” Permit Number 05PR0027 at 8. The 19.6 ton monthly SO₂ emission limit applies only “[d]uring the first twelve (12) months of operation.” *Id.* at 8. Based on data submitted by LUB and ARPA to EPA’s Clean Air Markets Division, the Lamar Plant violated the monthly SO₂ limit at least five out of its first twelve months of operation.

Monthly emissions data shows that the Lamar Plant violated the 19.6 ton monthly SO₂ limit for the months of September 2009, October 2009, November 2009, February 2010, and March 2010. The Lamar Plant violated this monthly limit by nearly eight-fold in the month of March 2010. Although data from April 2010 is not yet available to WildEarth Guardians it is very likely that the Lamar Plant violated the monthly SO₂ limit during this time.

iii. Violations of 1.4 lb/MWh Emission Rate

Permit Number 05PR0027 states that the coal-fired boiler is subject to Clean Air Act NSPS Subpart Da, 40 C.F.R. § 40Da, *et seq.*, with regards to its SO₂ emissions. *See* Permit Number 05PR0027 at 5. The NSPS require that the SO₂ emission rate at the Lamar Plant be limited to no more than 1.4 lb/mmBtu on a rolling 30-day average basis. *See* 40 C.F.R. § 43Da(i)(1)(i).

According to data submitted by LUB and ARPA to the EPA's Clean Air Markets Division and CEMS data from the Lamar Plant, the 1.4 lb/MWh SO₂ emission rate was violated on a 30-day rolling average basis on every day between at least July 31, 2009 and March 31, 2010, for a total of 244 violations. Both Clean Air Markets Division data and CEMS data indicate that the 1.4 lb/MWh limit was violated on all days. Although emissions data from April 1, 2010 to the date of this letter is not currently available to WildEarth Guardians, it is very likely that the Lamar Plant violated the 1.4 lb/MWh limit during this time and that violations are ongoing.

iv. Violations of 0.103 lb/mmBtu Emission Rate Emission Reduction Requirement

According to Permit Number 05PR0027, compliance with the 0.103 lb/mmBtu SO₂ emission rate is based on a "daily average." Permit Number 05PR0027 at 4. Based on data submitted by LUB and ARPA to EPA's Clean Air Markets Division and on CEMS data, the Lamar Plant violated the 0.103 lb/mmBtu SO₂ daily average limit on every day between July 1-7, 2009, July 31-August 7, 2009, August 12-August 21, 2009, August 28-September 6, 2009, September 10-October 10, 2009, October 12-October 29, 2009, November 1-November 10, 2009, November 12-November 25, 2009, on December 12, 2009, January 5-January 6, 2010, on January 13, 2010, January 14-January 15, 2010, on February 5, 2010, February 14-February 15, 2010, and February 18-March 24, 2010, for around 156 total violations. Although emissions data from April 1, 2010 to the date of this letter is not currently available to WildEarth Guardians, it is very likely that the Lamar Plant violated the 0.103 lb/mmBtu limit during this time and that violations are ongoing.

c. Violation of PM Limits

According to Section 4 of Permit Number 05PR0027, condensable PM emissions from the Lamar Plant are limited to a rate of no more than 0.02 lb/mmBtu and according to Section 7, total PM emissions are limited to a rate of no more than 0.015 lb/mmBtu of heat input. The 0.02 lb/mmBtu condensable PM emission rate is considered the best available control technology ("BACT") emission rate established under Colorado's Prevention of Significant Deterioration ("PSD") program, AQCC Regulation No. 3, Part D, while the 0.015 lb/mmBtu total PM emission rate is derived from the NSPS, 40 C.F.R. § 60.42Da(c)(2). Compliance with both the 0.02 lb/mmBtu and 0.015 lb/mmBtu emission rates are determined by stack testing. *See* Permit Number 05PR0027 at 9.

According to October 2009 stack testing data obtained by WildEarth Guardians from LUB and ARPA, the Lamar Plant has emitted and continues to emit total PM at a rate of 0.40982055 lb/mmBtu of heat input and condensable PM at a rate of 0.040057648 lb/mmBtu of heat input, significantly higher than both the allowable total PM emission rate and the condensable PM emission rate. These constitute at least two ongoing violations.

These violations should come as no surprise to LUB and ARPA. In a December 2009 communication, the Superintendent of LUB stated that:

It appears that the emissions of filterable particulate matter are reasonably near expected levels, but that the emissions of condensable particulate matter are far, far exceeding expected levels, and will constitute violations in terms of both mass emissions (tons per year) and the federal standard of total emissions per mmBTU.

This communication is attached to this notice letter as Exhibit 4 and indicates that LUB and ARPA are aware that the Lamar Plant has violated and continues to violate total PM and condensable PM emission rates.

II. The Citizen Suit Provision of the Clean Air Act

Under the Clean Air Act, any person may file suit against any other person alleged to “have violated (if there is evidence that the alleged violation has been repeated) or to be in violation of...an emission standard or limitation under this Act[.]” 42 U.S.C. § 7604(a)(1)(A). The phrase “emission standard or limitation” is broadly defined under the Clean Air Act and includes, but is not limited to, any “emission limitation, standard or performance or emission standard,” “any condition or a requirement under part C of title I [of the Clean Air Act] (relating to significant deterioration of air quality,” and “any other standard, limitation, or schedule established under...any permit term or condition.” 42 U.S.C. §§ 7604(f)(1), (3), and (4).

As explained, LUB and ARPA have violated and/or are in violation of numerous emission standards and limitations, including various NSPS set forth at 40 C.F.R. § 60.40Da, *et seq.*, permit terms and conditions, including permit limits established under PSD and the Colorado SIP at the Lamar Plant. At a minimum, at least 1,026 violations have occurred and/or are continuing to occur at the Lamar Plant. With this letter, WildEarth Guardians hereby provides notice to LUB and ARPA that it intends to file suit in federal court to enforce these violations if a resolution cannot be achieved within sixty days.

Further investigation is likely to reveal additional violations. WildEarth Guardians hereby retains the right to enforce any and all additional violations uncovered after the date of this notice letter. WildEarth Guardians’ contact information is listed below. If you have questions regarding these 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 me at (303) 573-4898 x 1303.

Sincerely,

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