



January 16, 2012

**VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

Don Steerman, Chairman  
Lamar Utilities Board  
Lamar Light and Power  
100 North Second Street  
Lamar, CO 81052

Houssin Hourieh, LUB Interim Superintendent  
Lamar Light and Power  
100 North Second Street  
Lamar, CO 81052

Bob Freidenberger, Board President  
Arkansas River Power Authority  
P.O. Box 70  
Lamar, CO 81052

Richard Rigel, General Manager  
Arkansas River Power Authority  
P.O. Box 70  
Lamar, CO 81052

**CC:**

Lisa Jackson, Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building, Headquarters  
1200 Pennsylvania Avenue, N. W.  
Washington, DC 20460

James Martin, Regional Administrator  
U.S. Environmental Protection Agency  
EPA Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129

Governor John Hickenlooper  
State of Colorado  
136 State Capitol  
Denver, CO 80203-1792

Christopher E. Urbina, Executive Director  
Colorado Dept. of Public Health and Environment  
4300 Cherry Creek Drive South  
Denver, CO 80246-1530

**RE: NOTICE OF INTENT TO SUE OVER CLEAN AIR ACT VIOLATIONS  
AT THE LAMAR REPOWERING PROJECT**

Dear Messrs. Schemahorn, Rigel, Leung, and Freidenberger:

**A. Introduction**

On March 24, 2011, WildEarth Guardians (“Guardians”) filed suit pursuant to the citizen suit provision of the Clean Air Act, 42 U.S.C. §§ 7601 et seq., in the United States District Court for the District of Colorado (Case No. 1:11-cv-00742) against Lamar Utilities Board, d/b/a Lamar Light and Power and the Arkansas River Power Authority (collectively “Lamar Utilities”) for repeatedly violating their air pollution emissions standards, limitations, and permit conditions at the Lamar coal-fired electric generating unit, also known as the Lamar Repowering Project (hereinafter the “LRP” or the “Lamar Plant”). Guardians brought this case on behalf of its members, including those in Lamar. Since coming on-line in May of 2009, the LRP has repeatedly violated its permitted limits for many dangerous air pollutants, including nitrogen oxides (“NOx”), sulfur dioxide (“SO<sub>2</sub>”), carbon monoxide (“CO”), and opacity.

On December 30, 2010, a tube failure and/or other operations problems caused the LRP to go offline. The LRP remained offline from December 31, 2010 until July 15, 2011. The LRP came back online on or about July 15, 2011. The LRP burned coal and generated electricity on every day from July 23, 2011 through October 14, 2011, and from October 26, 2011 through mid-November, 2011. Throughout its operation in 2011, the LRP repeatedly exceeded its permitted limits for NOx, SO<sub>2</sub>, CO, and opacity. These violations occurred after Guardians filed its Complaint in case No. 1:11-cv-00742. Guardians now intends to file a supplemental complaint in case No. 1:11-cv-00742 (Dist. Colo.) to include these new violations of the Clean Air Act.

These new violations are a continuation of the violations set forth in Guardians’ Notice of Intent to Sue letter dated July 14, 2010. See Notice letter, Attachment 1. Therefore, there is no legal requirement that you be notified by Guardians of our intention to sue upon these new violations. See e.g., Public Interest Research Group of New Jersey, Inc. v. Hercules, Inc., 50 F.3d 1239, 1250 (3<sup>rd</sup> Cir. 1995) (holding that as long as a post-complaint discharge violation is of the same type as a violation included in the original notice letter, no new 60-day notice letter is necessary to amend the complaint and include these violations in the suit). However, as a courtesy, Guardians hereby provides notice that it intends to file suit against Lamar Utilities over the new violations of the Clean Air Act set forth in this letter at the LRP, located at 100 North Second Street, Lamar, CO 81052.

Should 60-days notice be required by law, Guardians hereby provides such notice pursuant to the citizen suit provision of the Clean Air Act, 42 U.S.C. § 7604(b)(1). Guardians intends to file suit against Lamar Utilities, and seek appropriate injunctive relief, declaratory relief, and other relief that may be provided necessary to remedy these ongoing violations.

## **B. Emission Violations**

According to data provided to Guardians by Lamar Utilities in Case No. 1:11-cv-00742 (Dist. Colo.), 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 Quarterly Summary Report, Attachment 2; Monthly Emission2 Report for August 2011, Attachment 3; Monthly Emission2 Report for September 2011, Attachment 4; and Monthly Emission2 Report for October 2011, Attachment 5. Permit number 05PR0027 (“Lamar’s Permit”) 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.*

Lamar’s Permit includes limits for emissions of NO<sub>x</sub>, SO<sub>2</sub>, CO, and opacity from the circulating fluidized bed boiler, also known as the coal-fired boiler or AIRS Point ID 004. Condition 1 of Lamar’s Permit limits visible emissions at the Lamar Plant to 20% opacity during normal operation. During periods of startup, building of a new fire, cleaning of fire boxes, soot blowing, process modification, or adjustment or occasional cleaning of control equipment, the visible emissions shall not exceed 30% opacity for more than six minutes in any sixty consecutive minutes.

Condition 4 of Lamar’s Permit limits the 6-minute average opacity of emissions from the coal-fired boiler to 10%, except during periods of startup and shutdown, in which case “opacity shall not exceed the limits specified under visible emissions condition.” Condition 4 of Lamar’s Permit limits emissions of SO<sub>2</sub> from the coal-fired boiler to a daily average of not more than 0.103 pound per mmBtu heat input. Condition 4 of Lamar’s Permit also limits emissions of CO from the coal-fired boiler to not more than 76.5 pounds per hour based on a rolling 3-hour average.

Condition 7 of Lamar’s Permit requires the Lamar Plant to comply with Colorado Regulation No. 6 (Standards of Performance for New Stationary Sources), 5 CCR 1001-8, and the federally enforceable NSPS regulations, 40 C.F.R. §§ 60.40-60.46 (Subpart D) and 40 C.F.R. §§ 60.40Da-60.52Da (Subpart Da). Condition 7 of Lamar’s Permit limits the opacity of emissions from the coal-fired boiler to 20%, except for one 6-minute period per hour of not more than 27%. Condition 7 of Lamar’s Permit limits the SO<sub>2</sub> emission rate from the coal-fired boiler to no more than 1.4 lb/MWh on a 30-day rolling average basis. Condition 7 of Lamar’s Permit also limits the NO<sub>x</sub> emission rate from the coal-fired boiler to no more than 1.0 lb/MWh on a rolling 30-day average basis.

The following represent violations by parameter that are subject to this notice of intent to sue. The listing of these violations are set forth to provide LUB and ARPA with more specific notice of parameters and the types of violations that Guardians will set forth in its suit. Although emission data for November 2011 is not currently available to Guardians, it is very likely that the Lamar Plant violated its emission limitations during this time. Guardians intends to bring suit

over all violations at the LRP during 2011, including violations that may subsequently occur or be discovered.

### **1. Violations of NO<sub>x</sub> Limitations (1.0 lb/Mwh), 30 DRA**

Based upon data submitted by Lamar Utilities to Guardians and other credible evidence, Lamar Utilities has violated and continues to violate the Clean Air Act by failing to limit NO<sub>x</sub> emissions at the Lamar Plant to a 30-day rolling average (“30 DRA”) of 1.0 lb/MWh, as required by Lamar’s Permit and the applicable NSPS regulations for NO<sub>x</sub>, 40 C.F.R. § 60.44Da(e)(1). According to the Monthly Emission<sup>2</sup> Reports for September and October 2011 provided to Guardians, the Lamar Plant exceeded its emission limit of 1.0 lb/MWh (30 DRA) for NO<sub>x</sub> emissions every day from 9/16/11 through 10/31/11. See Att. 4 and Att. 5. Additional violations likely occurred on 8/9/11, 8/10/11, 8/11/11, 8/17/11, 8/18/11, and every day from 8/22/11 through 9/15/11, when the daily average exceeded 1.0 lb/MWh, but a 30 DRA was not provided. See Att. 3 and Att. 4. In the third quarter of 2011, the Lamar Plant exceeded its 1.0 lb/MWh emission limit for NO<sub>x</sub> at least 919.55 hours, or approximately 95% of its operating time. See Att. 2.

Lamar Utilities therefore violated Permit 05PR0027 Condition 7 and the NSPS emission limits for NO<sub>x</sub> at least 46 times from August 1, 2011 through October 31, 2011, in violation of the Clean Air Act. Lamar’s violations of these NO<sub>x</sub> limits are violations of an “emission standard or limitation” under the Clean Air Act, 42 U.S.C. § 7604(f), as well as applicable provisions of the Colorado SIP and its Permit, and there is evidence that the violations have been repeated and will continue when the Lamar Plant resumes operation in the future.

### **2. Violations of SO<sub>2</sub> Limitations (1.4 lb/Mwh)**

Based upon data submitted by Lamar Utilities to Guardians and other credible evidence, Lamar Utilities has violated and continue to the Clean Air Act by failing to limit SO<sub>2</sub> emissions at the Lamar Plant to a 30-day rolling average of 1.4 lb/MWh, as required by Lamar’s Permit and the applicable NSPS regulations for SO<sub>2</sub>, 40 C.F.R. § 60.44Da(i)(1). According to the Monthly Emission<sup>2</sup> Reports for September, and October 2011 provided to Guardians, the Lamar Plant exceeded its emission limit of 1.4 lb/MWh for SO<sub>2</sub> (30 DRA) every day from 10/9/11 through 10/31/11. See Att. 4 and Att. 5.

Lamar Utilities therefore violated Permit 05PR0027 Condition 7 and the NSPS emission limits for SO<sub>2</sub> emissions at least 23 times from August 1, 2011 through October 31, 2011, in violation of the Clean Air Act. Lamar’s violations of these SO<sub>2</sub> limits are violations of an “emission standard or limitation” under the Clean Air Act, 42 U.S.C. § 7604(f), as well as applicable provisions of the Colorado SIP and its Permit, and there is evidence that the violations have been repeated and will continue when the Lamar Plant resumes operation in the future.

### **3. Violations of Opacity Limitations**

Based upon data submitted by Lamar Utilities to Guardians and other credible evidence, Lamar Utilities has violated and continues to violate the Clean Air Act by failing to limit opacity

of emissions at the Lamar Plant to 20%, as required by Lamar's Permit and the NSPS for particulate matter, 40 C.F.R. § 60.42Da(b). According to the Quarterly Summary Report (3<sup>rd</sup> Quarter 2011), the Lamar Plant exceeded the 20% opacity limit on August 31, September 1, and September 2, 2011, for a duration of at least 90 minutes of excess emissions. See Att. 2. The Lamar Plant also exceeded the 20% opacity limit on October 31, 2011 for a duration of at least 60 minutes of excess emissions. See Daily Six Minute Average Opacity Report for October 31, 2011, Attachment 6.

Lamar Utilities therefore violated Permit 05PR0027 Condition 7 and the NSPS emission limits for opacity at least 25 times from August 1, 2011 through October 31, 2011, in violation of the Clean Air Act. Lamar's violations of these opacity limits are violations of an "emission standard or limitation" under the Clean Air Act, 42 U.S.C. § 7604(f), as well as applicable provisions of the Colorado SIP and its Permit, and there is evidence that the violations have been repeated and will continue when the Lamar Plant resumes operation in the future.

#### **4. Violations of SO<sub>2</sub> Limitations (0.103 lb/mmBtu)**

Based upon data submitted by Lamar Utilities to Guardians and other credible evidence, Lamar Utilities has violated and continues to violate the Clean Air Act by failing to by failing to limit SO<sub>2</sub> emissions at the Lamar Plant to a daily average of 0.103 lb/mmBtu, as required by Lamar's Permit. Compliance with the 0.103 lb/mmBtu SO<sub>2</sub> emission rate is based on a "daily average." According to the Monthly Emission<sup>2</sup> Reports for August, September, and October 2011 provided to Guardians, the Lamar Plant exceeded its daily average of 1.4 lb/MWh for SO<sub>2</sub> emissions on at least 18 days from August 1, 2011 through October 31, 2011. See Attachments 3 through 5. These violations occurred on 8/9/11, 8/17/11, 8/22/11, 8/23/11, every day from 9/17/11 through 9/21/11, 9/25/11, 9/26/11, every day from 9/28/11 through 10/3/11, every day from 10/7/11 through 10/10/11, 10/13/11, 10/14/11, and 10/29/11. Id.

Lamar Utilities therefore violated its daily emission limit for SO<sub>2</sub> at least 24 times from August 1, 2011 through October 31, 2011, in violation of the Clean Air Act. Lamar's violations of these SO<sub>2</sub> limits are violations of an "emission standard or limitation" under the Clean Air Act, 42 U.S.C. § 7604(f), as well as applicable provisions of the Colorado SIP and its Permit, and there is evidence that the violations have been repeated and will continue when the Lamar Plant resumes operation in the future.

#### **5. Violations of CO Limitations (76.5 lb/hr)**

Based upon data submitted by Lamar Utilities to Guardians and other credible evidence, Lamar Utilities has violated and continues to violate the Clean Air Act by failing to by failing to limit CO emissions at the Lamar Plant to the rolling three hour average ("3 HRA") of 76.5 lb/hour, as required by Lamar's Permit. In the third quarter of 2011, the Lamar Plant exceeded its 76.5 lb/hour emission limit for CO ("3 HRA") at least 235.82 hours, or approximately 24.4% of its operating time. See Att. 2. These violations occurred on 8/10/11, every day from 8/27/11 through 8/30/11, and every day from 9/18/11 through 9/30/11, for a total of at least 25 violations. Id. The LRP also exceeded its three hour rolling average for CO several times every day from

October 2 through October 6, 2011, with a total of at least 15 violations. See October Emission Report for CO, Attachment 7.

Lamar Utilities therefore violated its hourly emission limit for CO at least 40 times from August 1, 2011 through October 31, 2011, in violation of the Clean Air Act. Lamar's violations of these CO limits are violations of an "emission standard or limitation" under the Clean Air Act, 42 U.S.C. § 7604(f), as well as applicable provisions of the Colorado SIP and its Permit, and there is evidence that the violations have been repeated and will continue when the Lamar Plant resumes operation in the future.

### **C. Violations of Monitoring Requirements for NO<sub>x</sub>, SO<sub>2</sub>, CO, and opacity**

When measuring opacity, continuous emission monitoring systems ("CEMS") are known as continuous opacity monitoring systems ("COMS"). Condition 7 of Lamar's Permit requires Lamar Utilities to install, calibrate, maintain, and operate a CEMS, and record the output of the system, for measuring SO<sub>2</sub> emissions from the coal-fired boiler at the Lamar Plant. Condition 7 of Lamar's Permit requires Lamar Utilities to install, calibrate, maintain, and operate a CEMS, and record the output of the system, for measuring NO<sub>x</sub> emissions from the coal-fired boiler at the Lamar Plant. Condition 12 of Lamar's Permit requires Lamar's boiler to be equipped with a CEMS for CO. Lamar's Permit requires the CEMS at the Lamar Plant to be operating at all times to ensure representative measurements of emissions, with limited exceptions.

Condition 7 of Lamar's Permit requires the Lamar Plant to comply with Colorado Regulation No. 6, Part A, Subpart A, which incorporates by reference the General Provisions of 40 C.F.R. Part 60, including compliance with opacity standards according to 40 C.F.R. § 60.11 and continuous monitoring system operation as required under 40 C.F.R. § 60.13. Condition 12 of Lamar's Permit requires all CEMS to be capable of measuring and recording the emissions of SO<sub>2</sub>, and NO<sub>x</sub>, CO, and opacity, and to show compliance with these emission limits. The CEMS must conform to the requirements of 40 C.F.R. Part 72, 40 C.F.R. Part 75, and 40 C.F.R. Part 76. Lamar Utilities must "ensure that all continuous emission and opacity monitoring systems required by [40 C.F.R. Part 75] 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 the fluidized boiler is combusting any fuel, except as provided in § 75.11(e) (special considerations during the combustion of gaseous fuels), the Lamar Plant's continuous emission and opacity monitoring systems may only be down "during periods of calibration, quality assurance, or preventive maintenance," which must be performed pursuant to specific requirements set forth in 40 C.F.R. 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." See 40 C.F.R. § 75.10(d).

Downtime refers to the amount of time that the boiler is producing emissions, but the COMS or CEMS are not monitoring those emissions, due to monitor or non-monitor failure. During periods of monitor downtime, Lamar Utilities is unable to determine whether the Lamar Plant is complying with its applicable opacity requirements or emission limit requirements.

## **1. Violations of COMS Requirements**

Based upon data submitted by Lamar Utilities to Guardians and other credible evidence, Lamar Utilities has violated and continues to violate the Clean Air Act by failing to continuously monitor opacity when operating and/or burning coal in the coal-fired boiler at the Lamar Plant, as required by Lamar's Permit, 40 C.F.R. Part 75, 40 C.F.R. § 60.13, and 40 C.F.R. § 60.49Da(a), and by failing to operate the COMS in conformance with these requirements.

From August 1, 2011 through October 31, 2011, Lamar Utilities failed to continuously operate the COMS at the Lamar Plant to ensure compliance with its 20% opacity limitations and failed to provide representative measurements of opacity during that time. During the third quarter of 2011, the COMS had at least 126 minutes of downtime. See Att. 2. Although COMS downtime for November 2011 is not currently available to Guardians, it is very likely that the Lamar Plant violated the its continuous opacity monitoring requirements during this time. LUB and ARPA unlawfully operated the Lamar Plant by failing to continuously monitor opacity, violating Permit 05PR0027, Conditions 7 and 12.

Most of the Lamar Plant's monitoring downtime does not fall within one of the limited exceptions provided by Clean Air Act regulations and Lamar's Permit. The COMS downtime is also unexcused because it includes repeated and foreseeable equipment failures. Lamar Utilities has not met the requirements of its Permit and the Clean Air Act in order to excuse its repeated monitoring violations.

## **2. Other Violations of CEMS and COMS Requirements**

Based upon data submitted by LUB and ARPA to Guardians and other credible evidence, Lamar Utilities has violated and continues to violate the Clean Air Act by failing to continuously monitor NO<sub>x</sub>, SO<sub>2</sub>, CO, and opacity when operating and/or burning coal in the coal-fired boiler at the Lamar Plant, as required by Lamar's Permit and the Clean Air Act. The LRP burned coal and generated electricity on every day from July 23, 2011 through October 14, 2011, and from October 26, 2011 through October 31, 2011. However, according to the Monthly Emission<sup>2</sup> Reports for July, August, September, and October 2011 provided to Guardians, Lamar Utilities failed to continuously monitor NO<sub>x</sub>, SO<sub>2</sub>, CO, and opacity at all times when the Lamar Plant was operating and/or burning coal in the coal-fired boiler. See Attachments 3 through 5 and the Monthly Emission<sup>2</sup> Report for July, Attachment 8. For example, the report for July shows no emission monitoring data for any dates or times. See Att. 8.

## **D. 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). An "emission standard or limitation" is broadly defined to include any emission limitation, standard of performance, or emission standard under the Clean Air Act, any requirement of §§ 111 and 112 of the Act (without regard to whether such requirement is expressed as an emission

standard or otherwise), as well as any EPA-approved standard of performance or emission limitation under the SIP and any permit term or condition. See 42 U.S.C. § 7604(f).

The Clean Air Act, 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. See also 42 U.S.C. § 7413(e); 28 U.S.C. § 2461(a); 40 C.F.R. § 19.4; 74 Fed. Reg. 626 (Jan. 7, 2009). In addition to civil penalties, Guardians plans to seek declaratory and injunctive relief, and such other relief as is permitted by law. The Clean Air Act also permits prevailing parties to recover its costs, including attorney's fees. See 42 U.S.C. § 7604(d).

#### **E. Contact Information**

The name, address, and telephone number of the party providing this notice is:

WildEarth Guardians  
516 Alto Street  
Santa Fe, NM 87501  
Ph: (505) 988-9126

Guardians' legal counsel represents them in this matter. Please direct all correspondence to:

Ashley D. Wilmes  
827 Maxwell Avenue, Suite L  
Boulder, Colorado 80304  
Ph: (505) 988-9126 x1304

#### **F. Conclusion**

As explained herein, Lamar Utilities has violated and/or is 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. With this letter, WildEarth Guardians hereby provides notice to Lamar Utilities Board, d/b/a Lamar Light and Power and the Arkansas River Power Authority that it intends to file suit and/or supplement its Complaint in federal court to enforce these violations if a resolution cannot be achieved.

Guardians believes that this notice of intent to sue sufficiently states grounds for filing suit. The violations alleged herein are ongoing and we expect that discovery will identify additional and more recent CAA violations, which we also intend to pursue through litigation. Lamar Utilities' history of non-compliance with its permit terms, in addition to the violations cited herein, creates a reasonable likelihood that Lamar Utilities will continue to pollute in the future. 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 1304.



Sincerely,



Ashley D. Wilmes

By: Ashley D. Wilmes  
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**Attachments:**

1. Guardians' July 14, 2010 letter providing notice of intent to sue
2. Quarterly Summary Report for 3<sup>rd</sup> Quarter 2011
3. Monthly Emission2 Report for August 2011
4. Monthly Emission2 Report for September 2011
5. Monthly Emission2 Report for October 2011
6. Daily Six Minute Average Opacity Report for October 31, 2011
7. October 2011 Emission Report for CO
8. Monthly Emission2 Report for July 2011