



For a thriving New England

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February 8, 2011

Via Certified First Class Mail

Lisa Jackson, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Capitol Corporate Services, Inc.
Resident Agent for
Mt. Tom Generating Co., LLC
FirstLight Power Resources
GDF Suez Energy North America
10 Milk Street, Suite 1055
Boston, MA 02108

Kenneth Kimmell, Commissioner
Massachusetts Department
of Environmental Protection
One Winter Street
Boston, MA 02108

Mike Gwyther
Mt. Tom Station Plant Manager
200 Northampton Street
Holyoke, MA 01040

RE: Conservation Law Foundation Notice of Intent to Sue Mt. Tom Generating Company, LLC, FirstLight Power Resources, and GDF Suez North America, for Violations of Clean Air Act, 42 U.S.C. § 7604

Dear Administrator Jackson, Commissioner Kimmell and Mr. Gwyther:

On behalf of Conservation Law Foundation (“CLF”) and its members, I am writing to provide you with this notice that we intend to file a federal Clean Air Act (“CAA” or “Act”) citizen suit against Mt. Tom Generating Company, LLC, FirstLight Power Resources, and GDF Suez North America for significant and ongoing violations of the Clean Air Act’s opacity requirements including emissions limitations and monitoring violations at the Mt. Tom Station (“Plant”) located at 200 Northampton Street in Holyoke, Massachusetts. We are providing this notice pursuant to Section 304(b) of the CAA, 42 U.S.C. § 7604(b), and 40 C.F.R. Part 54.

Citizens are entitled to bring suit to enjoin violations of an emission standard or limitation under the CAA and to seek redress and civil penalties for such violations. 42 U.S.C. § 7604(a). The Act provides for civil penalties of up to \$32,500 per violation per day for violations occurring on or after March 15, 2004 and up to \$37,500 per violation per day for violations occurring on or after January 12, 2009. 42 U.S.C. § 7413(b), 7413(e), and 7604(a); 40 C.F.R. §§ 19.2 and 19.4 (2008). CLF intends to file suit any time after sixty (60) days following the postmarked date of this letter to enjoin the violations described below and ensure future compliance, obtain civil penalties for past noncompliance, recover attorneys fees and costs of litigation, and obtain any other appropriate relief.



Identification of Plaintiffs

Founded in 1966, CLF is a nonprofit, member-supported organization that operates advocacy centers in Boston, Massachusetts; Montpelier, Vermont; Concord, New Hampshire; Portland, Maine; and Providence, Rhode Island. CLF's corporate headquarters is located at 62 Summer Street, Boston, MA 02110. CLF works on behalf of its membership and with other environmental and community-based organizations and individuals to ensure that New England's dirtiest coal-fired power plants maintain compliance with applicable laws.

After 60 days, CLF will file suit on behalf of itself and its members living within the vicinity of Mt. Tom Station, who are being adversely affected by Mt. Tom Generating Company, LLC, FirstLight Power Resources, and GDF Suez's continuing violations of the opacity limitations contained in the Massachusetts State Implementation Program ("SIP") and in operating permits issued by the Department of Environmental Protection (the "Department") at its Holyoke, Massachusetts coal fired steam electric power generating station.

Background

Mt. Tom Station has been in operation for 50 years, and is one of only three coal-fired power plants that continue to operate in Massachusetts. The coal fired facility consists of one steam electric generating unit ("Boiler Unit"), as well as bottom ash basins, an equalization tank and Turbosorp® structure, and is located on 80 acres alongside the Connecticut River in Holyoke, Massachusetts. The boiler, Unit 1, is a Riley Stoker water-tube boiler that is fueled primarily with coal but is also authorized to burn flyash. This pulverized coal -fired boiler unit has a net design capacity of 146 MW and began operation in 1960.

The CAA allows citizens to directly enforce "emissions standards or limitations" including emissions limitations contained in the SIP, the Title V operating permit and any other permits issued under the SIP. 42 U.S.C. §§ 7604(a) and (f). Massachusetts law also provides for citizen enforcement of these limitations and permits pursuant to M.G.L. c. 214, c. 7A. CLF is continuing to review additional quarterly excess emissions reports submitted to the Department by Mt. Tom Generating Company, and will include any violations that occurred during the third and fourth quarters of 2010, and violations that occur up to and including the time of filing the complaint and during the course of the litigation.

Violations of the Clean Air Act

Mt. Tom Generating Company, LLC, FirstLight Power Resources, and GDF Suez North America have violated and continue to violate opacity limits established to protect public health and the environment. Opacity is a measure of soot in the gas stream emitted from the smokestack. Opacity is also used as a surrogate to assure compliance with limits on emissions of particulate matter ("PM"). See *Sierra Club v. Georgia Power Co.*, 443 F.3d 1346, 1350 (11th

Cir. 2006) (“While opacity itself is not a regulated pollutant, it acts as a ‘measurement surrogate’ for particulate matter, a pollutant that is regulated under the CAA”). The monitoring and reporting of opacity violations is especially important here because the plant does not continuously monitor its emissions of particulate matter and has not conducted a stack test to determine particulate matter emissions since 2006. *See Mount Tom Station Semi-Annual Compliance Monitoring Summary and Certification July 1 – December 31, 2009*, Table 3, p. 3, submitted February 24, 2010 (Exhibit 1).

Particulate matter (“PM”) is a mixture of small particles, including organic chemicals, metals, and ash which can cause severe health and environmental problems. Once inhaled, PM can affect the heart and lungs and cause serious health effects. *See* 52 Fed. Reg. 24,663 (July 1, 1987). Fine particulate matter (“PM_{2.5}”) is one of the deadliest pollutants emitted by stationary sources. PM_{2.5} has been linked to premature death, and increased hospital and emergency room admissions due to the exacerbation of respiratory and cardiovascular disease, irreversible damage to the lungs of children and infants, and infant mortality. *See, e.g.* Massachusetts Department of Environmental Protection, *Background and Technical Support Document for Proposed Amendments to 310 CMR 6.00*, 3-4 (July 22, 2009); *Clean Air Fine Particle Implementation Rule*, 72 Fed. Reg. 20,586, 20,596-20,587 (Apr. 25, 2007) *codified* at 40 C.F.R. Part 51); *National Ambient Air Quality Standards for Particulate Matter, Proposed Rule*, 71 Fed. Reg. 2620, 2627 (Jan. 17, 2006); *Letter from New England Environmental Commissioners to Stephen L. Johnson, Administrator of EPA* (Oct. 27, 2005). In addition, when PM settles on land or water, it may cause increased acidity in lakes and streams, nutrient imbalances in aquatic systems and damage to forest and farmlands.

The Massachusetts SIP provision that establishes visible emissions limitations from stationary sources other than incinerators is set forth at 310 CMR 7.06. The EPA approved and incorporated 310 CMR 7.06(1)(a)-(b) of Massachusetts’ visible emissions regulations into the Massachusetts SIP. *See* 40 C.F.R. Pt. 52.1120(c)(4); 37 Fed. Reg. 23,085 (1972). Under 310 CMR 7.06, opacity shall not “exceed twenty per cent (20%) opacity for a period or aggregate period of time in excess of two minutes during any one hour provided that, at no time during the said two minutes shall opacity exceed 40%.” 310 CMR 7.06(1)(b). The Massachusetts SIP also prohibits the emission of smoke with a density equal to or greater than No. 1 of the Ringelmann Chart for a period, or aggregate period, of time in excess of six minutes during any one hour, provided that at no time shall the shade, density or appearance be equal to or greater than No. 2 of the Ringelmann Chart. 310 CMR 7.06(1)(a).

In addition to the foregoing federally-approved SIP provisions, The Title V operating permit establishes opacity limitations for Mt. Tom Station. *See* Final Operating Permit Minor Modification, Holyoke Water Power Company, Mt. Tom Station, Permit No. 1-O-95-028. The Title V Permit provides that the visible emissions limit for opacity at Unit 1 is “less than or equal to 20%, except 20% to less than or equal to 40% for less than or equal to two minutes during any one hour”. Title V Permit, Table 3, p. 5; 310 CMR 7.06(1)(b). The permit also establishes an



emission limit for smoke at “less than or equal to No. 1 of the (Ringelmann) Chart for no more than 6 minutes during any one hour, at no time to exceed No. 2 of the Chart.” Title V Permit, Table 3, p. 5 (Exhibit 2); 310 CMR 7.06(1)(a). Each of the foregoing emission limitations in the Title V Permit is federally enforceable.

Mt. Tom Generating Company, LLC, FirstLight Power Resources, and GDF Suez North America have violated and continue to violate, at Boiler Unit 1, both the 20% and the 40% limits set forth in the Massachusetts SIP at 310 CMR 7.06(1)(a)-(b) as well as the other standards set forth above. Such violations are subject to citizen suit under section 304(a) of the Clean Air Act, which states that “any person may commence a civil action on his own behalf against any person ... who is alleged to have violated ... or to be in violation of an emission standard or limitation.” 42 U.S.C. § 7604(a). “Emission standard or limitation” is defined as:

- (1) a schedule or timetable of compliance, emission limitation, standard of performance or emission standard;” or (ii) “any other standard, limitation, or schedule established ... under any applicable State implementation plan approved by the Administrator.” 42 U.S.C. §§ 7604(f)(1) and (4).
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- (4) any other standard, limitation, or schedule established under any permit issued pursuant to subchapter V of this chapter or under any applicable State implementation plan approved by the Administrator, any permit term or condition, and any requirement to obtain a permit as a condition of operations.

The opacity limitations applicable to Mt. Tom Station provided in the SIP and the Title V Permit constitute one or more “emission standard(s) or limitation(s).” Accordingly, CLF will bring suit to enjoin violations of the requirements of the Massachusetts SIP, and the Title V Permit, and may seek civil penalties and other relief for such violations. We hereby notify you of a total of 2484 separate violations of the opacity limits, occurring from January 2005 through June 2010.

Total Number of Opacity Exceedances Being Noticed

(Unit 1 by Quarter)

YEAR	Q1	Q2	Q3	Q4	Total
2005	54	64	38	145	301
2006	66	44	114	199	423
2007	279	47	148	212	686
2008	145	156	175	204	680
2009	153	39	184	6	382
2010	4	8	No data	No data	12
Total					2484



These violations are documented in Mt. Tom Generating Company, LLC, First Light’s quarterly reports of mandatory monitoring at Mt. Tom which were generated and certified by First Light pursuant to its permit requirements and submitted to the Department. First Light is required to provide such reports to the Department pursuant to the Title V Permit, 310 CMR 7.14, and 40 C.F.R. Part 51, *Appendix P*. Additionally, we believe that violations occurred during periods for which the Plant did not monitor the opacity of emissions. The periods during which the continuous emissions monitors were not operating are also documented in the quarterly reports. These violations of opacity standards and failure to meet continuous monitoring requirements constitute one or more violations of the Massachusetts SIP and the Title V Permit, as detailed above. We have reason to believe that these violations are ongoing and will continue to occur. Therefore, we reserve the right to include additional violations in this suit as they are reported.

Notice

Mt. Tom’s activities, as described above, exceeding opacity limitations set forth in 310 CMR 7.06(1) and the above referenced permit, constitute violations of “an emission standard or limitation” subject to relief under the Clean Air Act’s citizen suit provision at 42 U.S.C. § 7604(a). This notice is being provided pursuant to the Clean Air Act, 42 U.S.C. § 7604(b)(1).

CLF reserves all rights to amend this notice and identify additional claims as further facts are developed. If you believe that any of the facts described above are in error or have any information indicating that Mt. Tom Generating Company, LLC, FirstLight Power Resources, and GDF Suez North America have not violated the Clean Air Act we urge you to contact the undersigned counsel immediately. CLF is interested in early and prompt resolution of these violations.

Sincerely,

A handwritten signature in blue ink that reads "Shanna Cleveland".

Shanna Cleveland
Staff Attorney
Conservation Law Foundation
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Boston, MA 02110
Ph: 617-850-1716
scleveland@clf.org

cc :
Curt Spalding, Region 1 Administrator, EPA
Governor Deval Patrick
Michael Gorski, Regional Director, WERO