



CONSERVATION LAW FOUNDATION

January 27, 2010

Via Certified First Class Mail

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

Laurie Burt, Commissioner
Massachusetts Department
of Environmental Protection
One Winter Street
Boston, MA 02108

Mr. Michael A. Fitzgerald,
Salem Station Director
Dominion Energy New England, Inc.
24 Fort Avenue
Salem, Massachusetts 01970

Resident Agent for
Dominion Energy New England, Inc.
CT Corporation System
155 Federal Street
Suite 700
Boston, MA 02110

Marisa Sifontes, Senior Counsel
Dominion Resources, Inc.
Law Department
120 Tredegar Street
Richmond, VA 23219

RE: Conservation Law Foundation Notice of Intent to Sue Dominion Energy of New England, Inc. for Violations of Clean Air Act, 42 U.S.C. § 7604

Dear Administrator Jackson, Commissioner Burt and Mr. Fitzgerald:

On behalf of Conservation Law Foundation (“CLF”) and its members, I am writing to provide you with notice that we intend to file a federal Clean Air Act (“CAA” or “Act”) citizen suit against Dominion Energy New England for significant and ongoing violations of the Clean Air Act’s opacity requirements including emissions limitations and monitoring requirements at the Salem Harbor Station (“Salem” or “Plant”) located at 24 Fort Avenue in Salem, Massachusetts. We are providing this notice pursuant to Section 304(b) of the Clean Air Act (“CAA” or “Act”), 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 Clean Air Act and 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

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NEW HAMPSHIRE: 27 North Main Street, Concord, New Hampshire 03301-4930 • 603-225-3060 • Fax: 603-225-3059

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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 attorney fees and costs of litigation, and obtain any other appropriate relief.

Identification of Plaintiff

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' interests, which are being adversely affected by Dominion's continuing violations of the opacity limitations contained in the Massachusetts State Implementation Program ("SIP") at its Salem, Massachusetts coal and oil fired steam electric power generating station.

Background

Salem Harbor Station has been in operation for over 50 years, and is one of only four coal-fired power plants that continue to operate in Massachusetts. The 65-acre facility consists of four steam electric generating units ("Boiler Units") and sits on the edge of Salem Harbor, a Maritime National Historic Site. Units 1, 2 and 3 are Babcock and Wilcox water-tube boilers that are fueled primarily with coal but are also authorized to burn oil flyash, high carbon coal flyash, used fuel oil, and crumb tire derived fuel. These units have net design capacities of 84, 81, and 150 Megawatts (MW), respectively. Unit 4, which is by far the largest of the boilers, is a Riley Stoker water-tube boiler that burns primarily oil but is also authorized to burn used fuel oil. This unit has a net design capacity of 440 MW. These boilers, installed between 1952 and 1972, have long outlasted their expected lifespans.

The Massachusetts Department of Environmental Protection issued its first draft Title V permit for Salem Harbor Station on August 25, 2009—almost 20 years after the establishment of the Title V program. The EPA did not object to the Title V permit and it became effective on October 8, 2009. Although the Title V permit provides limits that differ from those established under the Massachusetts SIP, many of the violations that are the subject of this notice of intent occurred before the effective date of the permit and are therefore governed by the SIP. The Clean Air Act allows citizens to directly enforce the emissions limitations contained in the SIP. 42 U.S.C. §§7604(a) and (f). Reports are not yet available regarding exceedances for the fourth quarter of 2009, and CLF may amend this notice to include violations of the Title V permit once that data is available. CLF will continue to monitor the plant's emissions and will include all violations up to the point of filing its complaint.

Violation of the Clean Air Act

Dominion has violated and continues 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 is not required to continuously monitor particulate matter; instead, the plant performs only an annual stack test for PM10 and no testing for PM2.5. *See Air Quality Operating Permit for Salem Harbor Station*, Table 4, Sections 14, 15 (Effective October 8, 2009).

Particulate matter 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 (“PM2.5”) is one of the deadliest pollutants emitted by stationary sources. PM2.5 has been linked to premature death, 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 result in acidic lakes and streams, nutrient imbalances in aquatic systems and damage to forest and farmlands.

Massachusetts’ regulation governing visible emissions, 310 CMR 7.06, states that 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), as incorporated into the Massachusetts SIP and approved by the EPA. *See* 49 Fed. Reg. 49,454. Dominion has violated and continues to violate both the 20% limit and the 40% limit at each of its 4 units. Violation of those standards makes Salem 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: (i) “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). Accordingly, CLF will bring suit to enjoin violations of the Massachusetts SIP, and approved emission control plans, and may seek civil penalties for such violations. Because Salem’s applicable opacity limitations set forth in the SIP and ECP constitute “an emission standard or limitation,” CLF will properly assert its right to bring a citizen suit for proper relief under the Act after 60 days.

C O N S E R V A T I O N L A W F O U N D A T I O N

We are notifying you of a total of 286 separate violations of the opacity limits, occurring from January 2005 through April 2009:

Total Number of Opacity Exceedances Being Noticed
(Across all Units 1, 2, 3 & 4, by Quarter)

YEAR	1Q	2Q	3Q	4Q	Total
2005	8	1	16	9	34
2006	1	11	6	9	27
2007	19	22	37	10	88
2008	3	14	23	30	70
2009	29	26	12	--	67
Total					286

These violations are documented in Dominion’s quarterly reports of mandatory monitoring at the Salem Harbor Station, which are provided in Attachment A. Dominion is required to provide such reports to DEP pursuant to the ECP, 310 CMR 7.14, and 40 C.F.R. Part 51, *Appendix P*. Additionally, we believe that these violations continued 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 reports included in Attachment A. These violations of opacity standards and failure to meet continuous monitoring requirements constitute violations of the Massachusetts SIP as detailed above. We also 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 by Dominion.

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Notice

Salem's activities as described above, exceeding opacity limitations set forth in 310 CMR 7.06(1)(b) and failing to continuously monitor opacity emissions as required under 310 CMR 7.14 and 40 C.F.R. Part 51, *Appendix P*, 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 Dominion has 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,



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cc: Curt Spalding, Regional Administrator, U.S. EPA – Region 1
Governor Deval Patrick